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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-99-120-51237 Office: Vermont Service Center

Date: 14 FEB 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

PUBLIC COPY

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during her visa issuance process at the American Embassy in Ottawa, Canada, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is primarily engaged in the design, development, and documenting of custom-developed software products. It states that it has 22 employees and a gross annual income of \$3 million. The petitioner was granted authorization to employ the beneficiary as a software engineer/systems analyst on March 24, 1999. The director subsequently revoked the approval of the petition based on a determination that the petitioner had not submitted sufficient documentary evidence to overcome the Embassy officer's objections that are discussed herein.

On appeal, the petitioner submits a statement and additional documentation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The record shows that the beneficiary was initially admitted to the United States on August 22, 1998, as the H-4 spouse of an H-1B temporary worker, with stay authorized to October 31, 1999. On March 11, 1999, the petitioner, Meganet Solutions, filed a petition seeking authorization to employ the beneficiary as an H-1B software

engineer/systems analyst for a period of three years. The petition was approved on March 24, 1999, and the beneficiary was granted H-1B status from March 30, 1999 to March 20, 2001. It is noted that the petitioner [REDACTED] was also authorized to employ the beneficiary's husband, [REDACTED] as an H-1B software engineer from November 1, 1998 to October 31, 1998. The petitioner's authorization to employ [REDACTED] was subsequently extended to October 31, 2002.

On February 7, 2000, the beneficiary and an individual claiming to be her husband appeared at the United States Embassy in Ottawa, Canada, and filed separate applications for H-1B visas in order to re-enter the United States. The Embassy officer who conducted the visa interviews concluded that the applications were not bona fide and denied both applications.

In a report dated February 10, 2000, the Embassy officer states, in part, that the individual who appeared for the visa interview claiming to be [REDACTED] was an impostor and that the beneficiary was a key conspirator in the fraud. The officer indicates that the individual claiming to be [REDACTED] stated in his interview that [REDACTED] employs 15 people, while the beneficiary stated in a separate interview that [REDACTED] employs 50 people. The officer further states that the details provided by the beneficiary and the individual claiming to be [REDACTED] concerning their marriage conflicted. The officer finally questioned the petitioner's bona fides.

The Vice Consul forwarded the report to the Director, Vermont Service Center, for consideration of possible revocation proceedings. Accordingly, the director revoked the approval of both petitions based on a determination that the petitioner had not submitted sufficient documentary evidence to overcome the Embassy officer's objections.

On appeal, the petitioner submits a copy of the appellate statement filed in the revocation proceedings relating to the beneficiary's husband, [REDACTED] EAC-99-261-55287. The petitioner states that the appellate statement filed in [REDACTED] case will also serve as the appellate statement in this proceeding, since the beneficiary is [REDACTED] wife.

The Manager of [REDACTED] states in pertinent part:

The Vice Counsel [sic] at US Embassy, Ottawa has erroneously concluded that [REDACTED] was an impostor, based on the [p]hotos and personal resemblance.

The Vice Counsel [sic] erroneously concluded that [REDACTED] couldn't explain his work duties . . . I feel that

██████████ who was subjected to [i]nterrogation was in a state of shock as this was not imagined while he was very confident that he would get the visa. In the state of [s]hock he might not have answered the questions properly, that does not mean that ██████████ cannot explain his work duties.

The Vice Counsel [sic] is not aware of the way marriages are arranged in India and erroneously concluded the explanation[s] offered by ██████████ [are contradictory] . . . This is a routine marriage and nothing strange about it. The affidavits provided by their parents and friends prove both their versions of explanation, as to how they met and married . . . ██████████

██████████ who was in the USA at that time contacted ██████████ over [the] [t]elephone and met in the presence of their elders and exchanged their views and consented to their marriage, that the marriage took place on 8th August 1998 . . . [The beneficiary] could have easily obtained a [visa] in a "[s]pecialty [o]ccupation" had she intended to come to the US before marrying ██████████

██████████ There was no necessity for a fraudulent marriage to gain entry into the US. The suspicions on the marriage are baseless and unfounded. They have not committed any fraud to enter the United States as both of them are meritorious on their own.

The Vice Counsel [sic] erroneously concluded that there was a fraud. Meganet Solutions LLC is in the b]usiness of [s]oftware [c]onsulting since October 1997. All documents pertaining to the [c]ompany are evidential [p]roof of a [f]ast [g]rowing [c]ompany as the Vice Counsel [sic] doubted.

The petitioner has submitted sufficient documentation such as federal tax returns and W-2 forms to demonstrate that the petitioner actually exists and is conducting business. This portion of the consular officer's objections has been overcome.

██████████ indicates in the appellate statement that he is submitting several documents, such as a wedding picture, a letter from the beneficiary's brother, a wedding invitation, an affidavit from the beneficiary's father, and a certificate of marriage, to show that the marriage between the beneficiary and ██████████ was arranged by their families in India as claimed. However, no such documents are contained in this record of proceedings.

It is noted that the petitioner has not provided any explanation for the conflicting statements made by the beneficiary and the individual claiming to be ██████████ during their visa interviews. Specifically, the individual claiming to be ██████████ stated that

the company has 15 employees, while the beneficiary stated that the company has 50 employees.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988). In this case, the petitioner has made various assertions on appeal, but has not provided any independent evidence to corroborate his assertions or to overcome the objections of the Embassy officer.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.