



DA

U.S. Department of Justice

Immigration and Naturalization Service

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

File: LIN-01-055-54091 Office: Nebraska Service Center

Date: OCT 07 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 that 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 that 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 that 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 denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an immigration attorney who claims to represent a software consulting and development business with six employees and a gross annual income of \$500,000. The petitioner seeks to employ the beneficiary as a software engineer for a period of three years. The director determined that the labor certification application and petition were not signed by an employee authorized by the organization to sign the documents and, therefore, such signatures are not considered to be valid.

On appeal, the petitioner submits a declaration.

8 C.F.R. 214.2(h)(2)(i)(A) states, in part, that:

A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will perform services, or receive training, even in emergent situations, except as provided in this section.

8 C.F.R. 103.2(a)(7)(i) states, in part, that:

An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as nonpayable will not retain a filing date.

8 C.F.R. 103.2(b)(12) states, in part, that:

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.

8 C.F.R. 103.2(a)(3), states, in part, that:

An applicant or petitioner may be represented by an attorney in the United States, as defined in part 1.1(f) of this chapter . . . or by an accredited representative as defined in part 292.1(a)(4) of this chapter.

The director denied the petition because the labor certification application and the petition were not signed by an employee

authorized by the organization to sign the documents and, therefore, such signatures are not considered to be valid. On appeal, the petitioner states, in part, that he was an employee of the petitioner in September 2000, until he filed the petition on November 30, 2000. He further states that on December 1, 2000, he terminated such employment and became the petitioner's outside attorney.

In Service correspondence dated March 27, 2001, the director properly requested that [REDACTED] submit a newly completed Form I-129 signed by an officer of the company and a completed Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to act as a representative for [REDACTED].

In response to the director's request, the petitioner's president submitted a letter dated May 7, 2001, in which he stated that [REDACTED] was hired as the petitioner's general counsel from September 2000 through November 30, 2000. The petitioner's president further stated that [REDACTED] was hired on December 1, 2000, as the petitioner's outside attorney, and that the I-129 petition was filed by [REDACTED] on November 30, 2000, while he was still an employee of the petitioner. The petitioner's president did not provide a new I-129 petition, a new labor condition application, or a completed G-28 authorizing [REDACTED] to act as a representative of [REDACTED] in this proceeding, as requested by the director.

The record indicates that the petitioner, [REDACTED] signed and mailed the I-129 petition in good faith on November 30, 2000, as he was an employee of [REDACTED] as of that date. The Service, however, did not receive the petition until December 5, 2000, when Mr. [REDACTED] was no longer an employee of [REDACTED] Corporation with authorization to sign the petition and labor condition application, as required by 8 C.F.R. 214.2(h)(2)(i)(A). As such, the director properly denied the petition because the I-129 petition and the labor condition application do not contain signatures of an employee authorized by the petitioning organization to sign the documents and, therefore, are not considered to be valid.

On appeal, [REDACTED] represents himself to be general counsel for [REDACTED] but fails to provide any evidence that he had been rehired by [REDACTED], his former employer. Mr. [REDACTED] former employer was the U.S. company that intended to hire the beneficiary as a software engineer. Mr. [REDACTED] never represented that he has any intention to hire the beneficiary.

In conclusion, Mr. [REDACTED] cannot be considered a representative of his former employer because he has never filed a G-28. His former employer's letter dated May 7, 2001, makes it clear that Mr. [REDACTED] terminated his employment as general counsel of [REDACTED] as of

November 30, 2000. Therefore, the director's objections have not been overcome on appeal.

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.