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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

DA

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



AUG 05 2003

File: LIN 01 264 55239 Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Michigan healthcare provider that has 11,482 employees and a gross annual income of \$1.9 billion in 1999. It seeks to temporarily employ the beneficiary as a resident physician in pediatrics for a period of three years. The director determined that the petitioner had not signed the return transportation attestation contained on the H Supplement to the I-129 petition. In addition, the petitioner had not provided additional licensure documentation requested by the director.

On appeal, counsel asserts that it does not advise petitioners to sign the second statement on the I-129 with regard to the petitioner's liability for return transportation. Counsel states that it is submitting additional evidence.

Pursuant to the petitioner's responsibility with regard to return transportation for H-1B petitioner holders, Section 214(c)(5)(A) of the Immigration and Nationality Act (the Act), states:

In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(I)(b) or 101(a)(15)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

With regard to the return transportation costs, 8 C.F.R. § 214.2(h)(4)(iii)(E) states:

Liability for transportation costs. The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. IF the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term "abroad" refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

Pursuant to the submission of petitions to the Bureau of Citizenship and Immigration Services (Bureau), 8 C.F.R. § 103.2 (A) (1) states, in pertinent part:

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

With regard to failure to respond to a request for further information, 8 C.F.R. § 103.2(B)(14) states, in part: "Failure to submit requested evidence which precludes a material line of enquiry shall be grounds for denying the application or petition."

The issue in this proceeding is whether the petitioner has properly filed the instant petition if it does not sign the second statement on the H Supplement to the I-129 petition, which addresses the employer's responsibility for paying the return transportation costs of a beneficiary who is dismissed from his or her position prior to the expiration of the authorized stay.

In the original petition submitted to the Bureau on September 14, 2001, the petitioner did not sign the second statement on page four on the H Supplement. In a request for further evidence, the director requested that the petitioner sign this statement and also submit evidence that the beneficiary held an unrestricted license, registration or certification that authorized her to fully practice as a physician in the State of Michigan. The director noted that the license submitted with the petition expired in June 2001.

In response, counsel provided a current physician license for the beneficiary for the State of Michigan that is valid until January 31, 2005. In addition, counsel stated the following with regard to the lack of a signature on the return transportation statement on the H Supplement:

This statement was included in the current I-129 form, which was created to implement the revised regulations proposed by the Immigration and Naturalization Service to implement the changes in the H-1B requirements. The proposed regulations did require that the Petitioner attest to the return transportation requirements as part of the H-1B petition. However, in response to comments received during the regulatory process, this requirement was eliminated from the final regulations. Since this requirement was eliminated from the final regulations, we do not advise the Petitioner to sign the second statement on the I-129 form.

On March 2, 2002, the director denied the petition because the petitioner had not complied with providing all the information requested by the director and had not complied with the instructions of the I-129 petition.

On appeal, counsel reiterates the statement contained in its response to the director's request for further evidence.

Counsel's statements are not persuasive. Bureau regulations at 8 C.F.R. § 103.2(A)(1) clearly indicate that petitioners shall execute and file documents with the Bureau in accordance with the instructions on the respective forms. In examining the H Supplement to the I-129 petition, the following instructions are found: "Section 1. Complete this section if filing for H-1A or H-1B classification". The statement with regard to the employer's liability for return transportation costs for H-1B specialty occupations and Department of Defense projects is contained in this section. If the petitioner fails to sign the return transportation statement, it does not appear to be complying with the instructions contained in the petition. Without such a signature, the petition appears to be incomplete and improperly filed. The appeal will be dismissed for being improperly filed and for failure to respond to the request for further evidence pursuant to 8 C.F.R. § 103.2 (b)(14).

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 appeal will be dismissed.

ORDER: The appeal is dismissed.