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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: WAC-01-068-53526 OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 2 9 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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 Citizenship and Immigration Services (CIS) 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 of the California 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 petition will be denied.

The petitioner is a financial services company that employs 34 persons and has a gross annual income of $3 million. It seeks to employ the beneficiary as a financial analyst. The director denied the petition because the petitioner failed to provide sufficient evidence to establish eligibility for an exemption to the nonimmigrant petition filing fee of $1,000.

On appeal, counsel submits a brief and additional evidence. On appeal, counsel asserts that the petitioner had provided the proper filing fee for the nonimmigrant visa petition. Counsel also asserts that the petitioner agrees to submit the $1,000 petition fee to the Service, now CIS.

The issue to be discussed in this proceeding is whether the petitioner had submitted the proper filing fee for its H-1B nonimmigrant visa petition.

According to the record, on December 19, 2000, the California Service Center had received the petitioner's I-129 petition, its check in the amount of $610.00, and its Form I-129W.

On April 12, 2001, the director requested that the petitioner submit evidence that would show that it qualified as an employer who is exempt from the nonimmigrant petition filing fee of $1,000. The director stated that Public Law Number 106-311 increased the filing fee for a petition to $1000, and unless exempt from the $1,000 fee, all H-1B petitions received by the Immigration and Naturalization Service (INS), now Citizenship and Immigration Service(CIS), on or after December 18, 2000, required the regular fee of $110.00 and the $1,000 filing fee. Further, the director stated that the petitioner's I-129 petition was received by the INS, now CIS, on or after December 18, 2000, without the proper fee of $1,000; and, that on Form I-129W, the petitioner had requested an exemption of the $1,000 fee based on the category that the petition was the second or subsequent request for an extension of stay filed for the beneficiary. The director found that the record failed to show that the petitioner qualified for this exemption; thus, the director requested evidence that would support the claimed exemption.

In response to the request, the petitioner submitted a copy of Form I-797A (its Approval Notice) along with a copy of its filing fee of $610.00.

On October 22, 2001, the director denied the petition, finding that the petitioner had failed to establish eligibility for the fee exemption. The director stated that the fee increase from $500 to

$1000 for H-1B petitions was effective on December 17, 2000, and that the petitioner's H-1B petition had been received by the INS, now CIS, on or after December 17, 2000. Further, the director stated that the petitioner had requested an exemption to the fee based on the claim that the immediate petition was the second or subsequent request for an extension of stay in H-1B status for the beneficiary; however, that the record showed that at the time of filing the previous petition, the beneficiary had been granted B-2 nonimmigrant status with an expiration date of December 21, 2000. Therefore, the previous petition was a request for change of status to H-1B, not a second or subsequent extension of stay in H-1B status.

On appeal, counsel submits a copy of its Form I-797C (its receipt notice), dated January 5, 2001, that states that $110 was received from the petitioner on December 19, 2000. Counsel asserts that the petitioner had filed its second H-1B petition for the beneficiary on December 7, 2000, before the date that the $1,000 filing fee was effective on December 17, 2000. Moreover, counsel asserts that the petition was filed with the proper fee of $110 because the INS, now CIS, had accepted the petition and provided the petitioner with a receipt notice. Counsel claims that the INS, now CIS, would have rejected the petition if the petitioner had not provided the proper fee. Finally, counsel states that the petitioner agrees to submit the $1,000 petition fee to the INS, now CIS.

Counsel's assertions on appeal are not persuasive.

The record shows that the INS, now CIS, did not receive the petitioner's H-1B visa petition before the effective date of the fee increase, nor does the record show that the petitioner qualifies for an exemption to the $1,000 fee requirement. The new filing fee of $1,000 applies to all petitions received by the INS, now CIS, on or after December 17, 2000. The record shows that the INS, now CIS, had received the petitioner's H-1B nonimmigrant visa petition on December 19, 2000; therefore, the petition had required the filing fee of $1,000, in addition to the regular fee of $110, because it was received after the effective date of the fee increase.

The next consideration is whether the petitioner qualifies for an exemption to the $1,000 filing fee. On Form I-129W, the petitioner indicated that it qualified for an exemption: it claimed that the immediate petition was the second or subsequent request for an extension of stay in H-1B status for the beneficiary. The record shows that at the time of filing the immediate petition, the beneficiary had been physically in the United States since June 22, 2000, on a B-2 nonimmigrant visa that would expire on December 21, 2000. Because the immediate petition is a request for change of status from B-2 status to H-1B, it does not qualify for an exemption because it is not considered a second or subsequent extension of stay in H-1B status.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition will be denied.