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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: LIN-99-045-50985 OFFICE: NEBRASKA SERVICE CENTER DATE: JAN 09 2004

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)

ON BEHALF OF PETITIONER:

[redacted]

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 nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for review.

On March 11, 1999, the director approved the immediate petition. In a letter, dated April 12, 2000, the acting director stated that the petitioner was being served with notice of the Immigration and Naturalization Service's (the Service), now Citizenship and Immigration Service (CIS), intent to revoke the immediate petition. The director stated that the petitioner was granted 30 days in which to submit to the office evidence in support of the petition and in opposition to the revocation. On November 3, 2000, the acting director revoked the immediate petition because the petitioner failed to respond to the director's notice of intent to revoke. Accordingly, the approval of the petition was revoked.

On November 13, 2000, the director received an appeal and additional documents submitted by [redacted] counsel on behalf of the petitioner. Counsel stated that the respondent, through counsel, had submitted a timely response to the acting director's letter of April 12, 2000.

On January 23, 2001, the director rejected counsel's appeal as improperly filed. The director stated that the record indicated that counsel did not qualify as a representative or legal counsel because the record did not contain a Form G-28 executed by counsel. In addition, the director stated that counsel's assertion, that a timely response was made to the director's letter of April 12, 2000, was unfounded: the Federal Express receipt, contained in the record, plainly showed that a response was made to the Southern Service Center, not to the Nebraska Service Center; moreover, the Service, now CIS, could not conclusively ascertain that the Federal Express package contained counsel's alleged documents.

On January 31, 2001, the director received counsel's motion to reopen or reconsider the petition. Counsel stated that he had, on behalf of the petitioner, submitted a timely response to the acting director's letter of April 12, 2000. Counsel alleged that the Federal Express' confirmation notice verified delivery of the package to the Nebraska Service Center on May 11, 2000. On March 5, 2001, the director responded to counsel's letter, stating that the petitioner's file had been reviewed and that the record did not contain a properly filed Form G-28 for [redacted] therefore, the appeal was properly rejected and that no provision exists to extend the appeal period.

On March 31, 2002, the director moved to reopen the appeal that counsel had filed on November 13, 2000. The matter is now before the AAO.

The evidence contained in the record discloses that Amarnath Gowda, of The Law Offices of Amarnath Gowda, had submitted the petitioning entity's initial I-129 petition. Later, [redacted] of the same law office submitted documents on behalf of the petitioning entity. Because [redacted] is employed with The Law Offices of [redacted] the Form G-28 filed by [redacted] would also authorize [redacted] to represent the petitioner. As such, Mr. [redacted] appeal, received by the Service on November 13, 2000, was properly filed.

A review of the evidence contained in this record reveals that the director had never fully evaluated the beneficiary's qualifications; therefore, the director must carefully review the beneficiary's credentials. For example, the beneficiary's educational evaluation from International Credential Evaluators, Inc. states that the beneficiary's diploma from Apple Computer Education, India, is equivalent to one semester in management information systems from an accredited university in the United States. However, the record contains no evidence that describes the courses completed by the beneficiary such as their titles or duration. The director must, therefore, review the evidence submitted and render a determination on whether the petitioner has overcome the stated reasons for revoking approval of the petition and on whether the beneficiary is qualified for the proffered position. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.