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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

[redacted]

File: LIN 00 150 52755 Office: NEBRASKA SERVICE CENTER Date: JAN 13 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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 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, Nebraska Service Center, who affirmed his decision in a subsequent motion to reopen and reconsider filed by the petitioner. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a software-consulting firm established in 1996 with 160 employees and a gross annual income of $18,000,000. It seeks to temporarily employ the beneficiary as a programmer analyst for a period of three years. The director determined that the petitioner failed to provide clear, unequivocal and convincing evidence with regard to the identity of the beneficiary.

On appeal, counsel submits a copy of the beneficiary's birth certificate, and signed and notarized affidavits from the parents of the beneficiary as to his parentage and birthdate. Counsel asserts that the petitioner has complied with Service requests for information and provided full and truthful information throughout the proceedings.

The issue in this proceeding is whether the petitioner has provided enough clear, unequivocal and convincing evidence to establish the beneficiary's identity.

The original I-129 petition submitted by the petitioner was received by the Service on April 21,2000 and requested a change in the previously approved employment, and an extension of stay for the beneficiary. The beneficiary was identified as Venkaty Satya P. Devalla. The petitioner also submitted numerous documents including the beneficiary's university records and subsequent training records. In addition, the petitioner submitted the beneficiary's I-94 paperwork, the original I797 Notice of Action that approved the beneficiary's initial H-1B visa in 1998, recent pay vouchers, and work experience letters and certificates.

On August 2000, the director requested further evidence with regard to the beneficiary's name. The director noted that the beneficiary's name on the petition was inconsistent with other listings of the beneficiary's name on other documents. The director identified the documents and the various name orders for the beneficiary listed on them. The director requested that the petitioner submit documentation that the person named in the instant petition was the same person named in the various documents.

On September 21, 2000, the previous counsel submitted an affidavit from the beneficiary that stated:

> [my] true last name is Devalla. My true given name is Satya prasad. Any other names including Sri, Rama,

> Venkaty, S.R.V. were given to me by my parents at childhood according to our own religious practices.

On January 23, 2001, the director denied the petition stating that it could not be determined that the person named in the petition was the same person named in the various documents submitted into evidence. The director considered the notarized affidavit signed by the beneficiary to be self-serving and not sufficient enough to establish the beneficiary's identity.

On February 16, 2001, counsel submitted a motion to reopen the proceedings for the instant petition. Counsel stated that the beneficiary's last name was Devalla, his first name was Satya and his middle name was Prasad. Counsel added that the beneficiary's family then gave him three more names pursuant to religious custom: Sri, Rama, and Venkaty. Counsel further stated:

> These three names are often abbreviated in India and there is no consistency to the placement of these names. Even still, many times in India all of the names are abbreviated except one. The custom is very different than what we have in the United States. . . All five names plus his surname are on all of the documents. It is that the order changes as each official picks his or her own way to document [the beneficiary's] name.

Counsel also submitted a marriage certificate for the beneficiary, as well as birth certificates for the beneficiary's two children.

Upon review of the materials submitted with the motion to reopen, the director continued to deny the instant petition. The director pointed out that the assertions of counsel with regard to the order of names and customs in Indian did not constitute evidence. In addition, the director determined that the marriage certificate for the beneficiary and the birth certificates for the two children also did not resolve the disparities discussed in the prior denial of the instant petition. The director pointed out additional discrepancies or corrections on these documents.

On appeal, counsel asserts that the beneficiary named in the H-1B petition is the same person named in the various documents submitted into evidence, and that the petitioner submitted clear, unequivocal and convincing evidence that the record of the claimed admission relates to the beneficiary.

In addition, counsel asserts that the director is penalizing the beneficiary for having a long name. Counsel asserts that all the documents submitted with regard to the beneficiary clearly refer to the same person. Counsel states although each document has a variation of the same name, they all possess the names Satya Prasad Venkaty Sri Rama Devalla or some arrangement of initials therein. Counsel also states that the only difference in the names is the arrangement of the names, and that on some documents some

of the names were initialed. As further documentation, counsel submits the contents of the beneficiary's birth certificate obtained through the Gajuwaka Municipality of Visakhkapatnam, India. He also submits original signed and notarized affidavits from both of the beneficiary's parents as to the beneficiary's date of birth and name.

8 C.F.R. Section 101.2 Presumption of lawful admission; entry under erroneous name or other errors, states in part:

> An alien who entered the United States as either an immigrant or non-immigrant under any of the following circumstances shall be regarded as having been lawfully admitted in such status, except as otherwise provided in this part: An alien otherwise admissible whose entry was made and recorded under other than his full true and correct name or whose entry record contains errors in recording sex, names of relatives, or names of foreign places of birth or residence, provided that he establishes by clear, unequivocal, and convincing evidence that the record of the claimed admission relates to him,. . . and, if entry occurred on or after May 22, 1981, if under other than his full, true and correct name that he also establishes that the name was not adopted for the purpose of concealing his identity when obtaining passport or visa, or for the purpose of using the passport or visa of another person or otherwise evading any provision of the immigration laws, and that the name used at the time of entry was one by which he had been known for a sufficient length of time prior to making application for a passport or visa to have permitted the issuing authority or authorities to have made any necessary investigation concerning him or that his true identity was known to such officials.

Upon review of the record, it is clear that the beneficiary's name has been recorded in various ways on both Indian and United States documents. According to the record, none of these documents have been deemed fraudulent. These public documents show different iterations of the beneficiary's name from his university years up to the present day. Counsel's comment in the initial motion to reopen that the abbreviation of names may have been done as a matter of convenience by Indian officials appears to have some merit. For example, it is noted that the official record of entry for the beneficiary into the United States, Form I-94, identifies the beneficiary as "Satya Prasad Devalla SRV". This record appears to contain the beneficiary's complete name, although three names are initialed. It should be noted that if the beneficiary's entire name were to be written out, it would not fit into the spaces available on the I-94 document.

It should also be noted that there is no discrepancy between the beneficiary's passport, and other marriage or identity documents,

with regard to the beneficiary's sex, date of birth, name of wife, and names of his parents. There is also no discrepancy between the I-94, the I-129, and various identity documents submitted by the petitioner with regard to the beneficiary's date of birth and country of origin. It should also be noted that in the affidavits submitted as part of the appeal, parts of the beneficiary's parents' names are also initialized. Such initializing does appear to be a customary and permissible practice in India.

In conclusion, the various versions of the beneficiary's name contained on the documents submitted in the instant petition are confusing; however, they do not appear to be the result of any malicious intent to subvert the immigration laws of the United States. The various documents submitted by counsel up to and including the notarized affidavits by the beneficiary's parents appear to establish that the beneficiary for the instant petition was the same person who entered the United States as a H-1B nonimmigrant in 1999. Pursuant to 8 C.F.R. Section 101.2, the petitioner has established through clear, unequivocal, and convincing evidence that the record of admission pertains to the beneficiary and that the beneficiary did not adopt another name for purposes of obtaining a passport or visa.

With regard to the director's comments on the self-serving nature of the beneficiary's affidavit, information contained in an affidavit should not be disregarded simply because it appears to be hearsay or self-serving. In administrative proceedings that fact merely affects the weight to be afforded such evidence, not its admissibility. Matter of Kwan, 14 I&N Dec. 175, 177(BIA 1972). In the instant petition, the weight to afford the beneficiary's affidavit with regard to his name should be determined by other relevant evidence in the record, including his university records, passport, and other entry documents.

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 sustained that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.