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Please respond to
 Gainesville
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December 4, 1995

Ms. Yvonne M. Lafleur
Chief, Non-Immigrant Branch Adjudications
Immigration and Naturalization Service
425 Eye Street NW
Washington DC, 20536

Dear Ms. Lafleur:

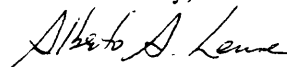
I am writing to request an opinion regarding the necessity for an H-4 visa holder to re-file when the H-1B principal alien changes employer. Consider the following facts:

The principal alien is the beneficiary of an H-1B visa petition by "Company A". The visa is valid for a period of 3 years. The accompanying family member receives an H-4 visa for the same period reflecting the principal alien's employment with "Company A". One year later, the principal alien changes employers. A new H-1B visa is petitioned for by "Company B", and all procedures are followed so that the principal alien is never out of status. The validity dates on the H-4 accompanying family member's visa has two years remaining, but still shows "Company A" as the H-1B petitioner and not "Company B".

The non-immigrant status of an H-4 visa holder is a derivative of the separate non-immigrant status held by the principal alien based on authorized employment in the United States. The question then is: Whether the H-4 visa holder maintains their status as long as the principal alien maintains his/her status, or are they also required to re-file to maintain their status in change of employer situations? This issue has arisen with several examiners in regards to whether the principal alien's family owes a penalty under INA Section 245(i) when adjusting status, or when requesting an extension on Form I-539.

Your assistance in settling this legal issue is greatly appreciated. Thank you for your kind consideration, and I look forward to your response.

Sincerely,



Alberto A. Lense

AAL/acb

WORLDWIDE REPRESENTATION



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.8-C

425 I Street NW.
Washington, DC 20536

DEC 28


Mr. Alberto A. Lense
500 E. University Ave., Suite D
Gainesville, Florida 32601

Dear Mr. Lense:

This refers to your letter of December 4 in which you pose a question concerning the H-4 nonimmigrant classification. For the sake of brevity, this letter contains only the response to your question.

As you correctly note in your letter, an H-4 nonimmigrant alien's authorized stay in the United States is contingent on the continued validity of the H-1B principal alien's status. The H-4 nonimmigrant alien continues to remain in a valid nonimmigrant status as long as the principal alien remains in a valid H-1B nonimmigrant status. However, since the H-4 nonimmigrant classification is not specific to an employer, the H-4 nonimmigrant alien remains in valid status even if the principal alien changes H-1B employers. No action is required on the part of the H-4 nonimmigrant alien when the principal H-1B alien changes employers within the same classification.

I trust this response satisfactorily addresses your concerns.


Yvonne M. LaFleur
Chief, Nonimmigrant Branch
Adjudications