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December 2, 1994

Ms. Jacquelyn A. Bednarz
Chief, Nonimmigrant Branch
United States Department of Justice
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Dear Ms. Bednarz:

Following our telephone discussion of November 22, 1994, we would like an advisory opinion on the following situation:

A foreign national is working for a company in F-1 post-graduation practical training status. According to his I-20 ID (Student Copy) and his valid EAD, his practical training is authorized through January 25, 1995.

On November 14, 1994, the company filed a petition to change his status from F-1 to H-1B, asking that the H-1B petition become effective January 25, 1995, the last day of the authorized practical training. The petition and change of status were approved on November 18, 1994, and an I-797A approval notice with I-94 was issued, valid from January 25, 1995 through January 25, 1998.

QUESTIONS:

1. Is the individual able to leave the United States and properly re-enter as an F-1 on his valid F-1 visa prior to January 25, 1995?

2. Will his departure and re-entry to the United States in F-1 status prior to January 25, 1995 vitiate the approved change of status to H-1B?

3. Upon departing the United States, presumably the individual should surrender the I-94 he was issued upon his last entry, and <u>not</u> the one that

was issued with the I-797A approval notice. Is this correct?

4. On January 25, 1995, will the I-94 that the Service issued with the approval of the H-1B petition and change of status automatically supersede the I-94 (reflecting F-1 status) that the beneficiary will be issued when he re-enters the United States on his F-1 visa prior to January 25?

We appreciate your attention to this matter, and look forward to your advisory opinion.

Very truly yours,

Naomi Schorr

Mark D. Koestler

U.S. Department of Justice
Immigration and Naturalization Service

HQ 248-C
HQ 214f-C

425 I Street NW.
Washington, DC 20536

06 APR 1995

Ms. Naomi Schorr
Mr. Mark D. Koestler
1290 Avenue of the Americas
New York, New York 10104

Dear Ms. Schorr and Mr. Koestler:

This is in response to your letter of December 2, 1994, requesting an advisory opinion. I apologize for the delay in responding to you and hope that you were not inconvenienced as a result.

You pose a series of questions about an F-1 nonimmigrant for whom a company filed a petition to classify him as an H-1B nonimmigrant with a concurrent application to change status. The individual was authorized to engage in practical training after completion of studies as an F-1 until January 25, 1995. The company filed the H-1B petition and the application to change status on November 14, 1994, and both were approved on November 18, 1994. An I-797 approval notice with a new I-94 were issued, valid from January 25, 1995 (the date of expiration of the individual's F-1 status) until January 25, 1998. For brevity's sake, your questions are not reproduced below.

1. The individual would be able to leave the United States and properly reenter as an F-1 nonimmigrant using his valid F-1 visa before January 25, 1995. Of course, he must establish that he is a bona fide nonimmigrant seeking to enter the United States temporarily for the purpose contemplated by the requested visa category. A nonimmigrant alien may remain in the United States only until a predetermined date and may engage in only those activities that are compatible with the specific nonimmigrant classification given at entry.

It is worth noting, since "intent" frames the issue in many immigration-related proceedings, that an alien may be classifiable under more than one paragraph at section 101(a)(15) of the Immigration and Nationality Act (the Act), but cannot maintain status in more than one classification at a time in the United States. An alien may choose to apply for any one of several nonimmigrant classifications that apply to his or her given circumstances but must qualify in every respect for that status. However, although an alien can hold concurrent visas in more than one type of nonimmigrant classification, an alien may only maintain a single nonimmigrant classification at a given time within the United States. This principle holds for any situation involving more than one nonimmigrant status at a single time because the Act

does not provide for holding more than one nonimmigrant classification at the same time. Within certain limits, the alien applicant may choose any nonimmigrant status for which he or she may be eligible, after evaluating the relative advantages and disadvantages of each. Where there is an incidental as well as principal purpose for the visit, the alien is classified in accordance with the principal purpose.

2. The individual's departure and reentry to the United States before January 25, 1995, would not invalidate the approval of the change of status application to H-1B status if the individual's intent was to reenter the United States in order to continue his F-1 practical training. However, under section 214(b) of the Act, he must establish to the satisfaction of the inspecting officers at the port of entry at the time of application for admission that he is entitled to a nonimmigrant status under section 101(a)(15) of the Act (in this case F-1 classification).

3. Regulations at 8 CFR 231.2 require that departure manifests must be in the form of a properly completed departure portion of Form I-94, Arrival-Departure Record, for each person on board the vessel or aircraft except for citizens and lawful permanent residents of the United States. Whenever possible, the departure I-94 used shall be the same form given to the alien at the time of arrival in the United States. There is no requirement in the regulations that an alien surrender all Forms I-94 in his or her possession. It appears, therefore, that the individual was not required to surrender his I-94 that was issued with the I-797A approval notice when he departed the United States.

4. The individual will be in H-1B status if he satisfies the following requirements: he must not have had the intent to bypass the normal visa issuing procedures; he must have been lawfully admitted to the United States as an F-1 nonimmigrant prior to January 25, 1995; he must continue to maintain his current nonimmigrant status; and he must be qualified for the new status.

I hope this response has provided some guidance in this matter.

Sincerely,

Jacquelyn A. Bednarz
Chief, Nonimmigrant Branch
Adjudications