

Immigration

Retired Basketball Players' Group Misses Shot at Worker Visa

A slip-up on a visa application cost an association for former professional basketball players its fourth shot at hiring a Georgian immigrant as its operations and special projects coordinator.

U.S. Citizenship and Immigration Services acted well within its authority to reject the National Basketball Retired Players Association's petition for a highly skilled guestworker visa, a federal judge in Illinois ruled June 20 (*Nat'l Basketball Retired Players Ass'n v. U.S. Citizenship & Immigration Servs.*, N.D. Ill., No. 1:16-cv-09454, 6/20/17).

The NBRPA applied for an H-1B visa for fiscal year 2017, which started Oct. 1, 2016. But the association's labor condition application filed with the Labor Department said Mariam Kurdadze would start working on June 1, 2016—before the start of the fiscal year. Employers must get approval from the DOL before they can file H-1B petitions with the USCIS.

It didn't matter that the proper date, Oct. 1, was used on the petition filed with the USCIS, U.S. District Court for the Northern District of Illinois Judge John J. Tharp said. The USCIS looks at the DOL application as well and was allowed to consider it, he said.

'Pretty Outrageous' The case is "pretty outrageous" and "flies in the face of common practice," Susan Cohen of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo in Boston told Bloomberg BNA June 21.

Nearly every employer that seeks an H-1B visa puts an earlier start date on its LCA than on the petition filed with the USCIS, said Cohen, who heads the firm's immigration practice. That's because DOL regulations won't let an employer put down an employment start date more than six months after the LCA is filed, she said.

LCAs need to be approved before petitions can be filed with the USCIS--and those petitions can't be filed more than six months before the Oct. 1 start date of the fiscal year. And employers usually like to get their LCAs in early in case there are any DOL processing delays, Cohen said,

The USCIS "routinely" approves H-1B petitions for shorter periods than those listed on the LCA, she said. The USCIS has to follow the LCA rather than the petition but doesn't usually reject a petition outright because the employment dates don't match up, she said.

"I hope it's an anomaly" that the petition was rejected in this case, Cohen said.

Piston & Carpenter represented the NBRPA. The U.S. attorney's office represented the USCIS.

BY LAURA D. FRANCIS

To contact the reporter on this story: Laura D. Francis in Washington at lfrancis@bna.com

To contact the editors responsible for this story: Peggy Aulino at maulino@bna.com; Terence Hyland at thyland@bna.com; Chris Opfer at copfer@bna.com

Text of the opinion is available at http://www.bloomberglaw.com/public/document/NATIONAL_BASKETBALL_RETIRED_PLAYERS_ASSOCIATION_an_Illinois_corpo?doc_id=X97A2IG0000N.

To request permission to reuse or share this document, please contact permissions@bna.com. In your request, be sure to include the following information: (1) your name, company, mailing address, email and telephone number; (2) name of the document and/or a link to the document PDF; (3) reason for request (what you want to do with the document); and (4) the approximate number of copies to be made or URL address (if posting to a website).