

Refer To This File Number: A70 055 508(E-4)

Date: JUL 24 2008

To: Maneklal Vithadas Patel  
7949 N. Flintlock Road, Apt. G  
Kansas City, MO 64158

Represented by: Rekha Sharma-Crawford  
7208 W. 80<sup>th</sup>, Suite 202  
Overland Park, KS 66204

It is ordered that your Form I-130, Petition for Alien Relative, filed on behalf of Pragneskumar J. Patel

be denied because:  
 be revoked because:

\*\*\*SEE ATTACHED\*\*\*

YOU MAY NOT APPEAL THIS DECISION.


You may, if you wish, appeal this decision. You must submit such an appeal to THIS OFFICE with a filing fee of \$110.00. If you do not file an appeal within the time allowed, this decision is final. Appeal in your case may be made to:

- The Board of Immigration Appeals (Board) in Falls Church, Virginia. It must reach this office within 15 calendar days from the date this notice is served (18 days if this notice is mailed).
- The Administrative Appeals Unit (AAU) in Washington, D.C. It must reach this office within 30 calendar days from the date this notice is served (33 days if this notice is mailed).

Do NOT send your appeal directly to the Board or to the AAU. Please direct any questions you may have to the Immigration and Naturalization Service office nearest your residence.

Enclosure(s):

Sincerely yours,

  
Michelle C. Parry  
Field Office Director

Original Copy Sent 7/29/08  
via mail & email

Rec.

On August 2, 2007, the Service sent a Notice of Intent to Revoke Form I-130, Petition for Alien Relative, filed on behalf of Pragneshkumar J. Patel by Maneklal Vithadas Patel. The petitioner was granted thirty (30) days to submit evidence establishing the eligibility of the beneficiary for classification as a "child" under the Act at the time of his adoption by the petitioner. The facts in the instant case were clearly stated in the notice of intent to revoke, and will not be repeated here.

The petitioner, through his attorney, responded to the notice of intent to revoke the instant petition. In the rebuttal, the petitioner asserts that the record must be examined as a whole, and that an adjudicator is expected to consider both the facts which support, and the facts which do not support, the decision made. The final decision must reflect this consideration.

The rebuttal noted that the Service was inaccurate in asserting that the third petition, approved by the Service, did not address the prior denial of the first petition filed on May 5, 1992. In fact, Form I-130 does note that the petition filed on May 5, 1992 was denied on July 6, 1998. However, the petition denied on that date was, in fact, the second petition, which had been filed on October 27, 1997. The first petition was actually denied on July 13, 1995. The appeal to the Board of Immigration Appeals was dismissed on July 22, 1997.

In filing the third petition, the petitioner submitted a memorandum in support of the petition. The memorandum, in a statement of the facts, addressed the specific grounds for the denial of the second petition—the question of parental custody and control, and submitted evidence that the adoptive father, the petitioner, did indeed have parental control of the beneficiary, and was contributing to his support and education. Furthermore, the memorandum quoted the section of the Immigration and Nationality Act which defines "immediate relative", and then stated that "the Petitioner is a U.S. citizen. Beneficiary became Petitioner's child through legal adoption. Consequently, the beneficiary is the child of the Petitioner, a citizen of the United States." The Service agrees that the beneficiary was lawfully adopted under the laws of the State of California. However, the question of the date of birth of the beneficiary impacts the issue of eligibility for classification as a "child" under the Immigration and Nationality Act.

There was no mention of the question of the date of birth of the beneficiary, nor of the controversy surrounding it, which is germane to the eligibility of the beneficiary of the petition. There was no acknowledgement of the dismissal of the appeal for the first petition, upon which the Board of Immigration Appeals ruled on July 22, 1997, just three months prior to the filing of the third petition. Thus, the evidence submitted with the third filing contains only evidence which directly relates to the denial of the second petition.

Once again, if the beneficiary had attained the age of sixteen (16) years on the date of his adoption, the fact that the petitioner and beneficiary met any other requirements is not relevant, as the beneficiary would be statutorily ineligible for the benefit sought.

Taken as a whole, the question of the date of birth of the beneficiary, and the efforts to document such date, was answered in the decision of the Board of Immigration Appeals to uphold the decision of the District Director in San Francisco to deny the first petition. There is no new evidence which contradicts the findings of the Board of Immigration Appeals. The Board specifically noted that, due to the opportunity for fraud, a delayed birth certificate is not always sufficient to prove the facts of the birth. And, as a matter of fact, there were two birth certificates with non-consecutive registration numbers and dates of execution. The United States vice consul stated, in his investigation, that this fact may be evidence of fraud. All of the documents submitted in support of the birth date of June 1, 1974, were executed many years after the birth. The beneficiary's passport was not amended until after he had applied for and received a non-immigrant visa, and had arrived in the United States.

The birth date of June 1, 1974 would make the beneficiary eligible for classification as a "child" under the Act. The birth date of June 1, 1973 does not. The Service concludes that, taking into account the lack of probative evidence of the date of birth of the beneficiary, the inconsistent evidence submitted in support of the June 1, 1974 date of birth, the decision of the Board of Immigration Appeals that the beneficiary had failed to meet the burden of proof of his birthdate, the fact that the beneficiary obtained his original passport, and made an application for a non-immigrant United States visa using the date of birth of June 1, 1973, the fact that he had waited until he had been in the United States several months before going to the Consulate of India to amend his passport, and finally, the fact that the adoption process in the State of California began within four months of his change of birth date, the beneficiary and the petitioner have not established that the beneficiary is eligible for classification as a "child" under the Act at the time of adoption. The petition is revoked as a matter of law and regulation.