



his application on January 12, 2001, but did not include the required information concerning his H-1B1 visa. Petitioner filed additional papers on January 26, 2001, including an INS Approval Notice issued January 16, 2001, for an H-1B1 visa valid from February 26, 2001, to February 25, 2004. However, no copies of the petition and related correspondence with the INS were submitted to OED with the copy of the INS Approval Notice.

On February 12, 2001, Petitioner's application was "disapproved due to the failure to demonstrate that the scope of his employment authorization granted by the INS involved the preparation and prosecution of patent applications." Decision of the Director of OED, p. 3. Petitioner again supplemented his application on February 12, 2001, and simultaneously petitioned for entrance to the April 2001 exam. On March 4, 2001, the Director of OED denied the request, indicating that Petitioner's application failed to "demonstrate [that] the scope of Applicant's employment authorization . . . involved the preparation and prosecution of patent applications." *Id.* The decision observed that "[n]o justification for allowing Applicant to submit papers after the extended deadline has been demonstrated, as Applicant has offered no reasons for his untimeliness." *Id.*

On March 19, 2001, Petitioner filed the present petition requesting admission to the April 2001 exam. The petition is viewed as a request for suspension of the rules to allow him to supplement his application after the January 12, 2001, filing deadline for the April 2001 registration exam. 37 CFR § 10.170.

#### OPINION

Individuals who are not United States citizens, but who reside in the United States, can take the patent registration exam if they meet certain requirements. However, upon passing such an exam, the individual receives only limited recognition under 37 CFR § 10.9(b) and only if

that limited recognition is consistent with the capacity of employment authorized by the INS. For this reason, aliens residing in the United States are required to submit documentation with their exam application showing that their scope of employment authorized by the INS includes representing patent applicants before the USPTO in patent cases.

A bulletin provided to those interested in taking the April 2001 exam, entitled "General Requirements Bulletin for admission to the Examination for Registration to practice in Patent Cases before the U.S. Patent and Trademark Office," unambiguously sets out this requirement. On page 9, the bulletin states:

Aliens residing in the United States may apply to take the registration examination. To be admitted to the examination, an applicant must establish by clear and convincing evidence that recognition is consistent with the capacity of employment authorized by the U.S. Immigration and Naturalization Service ("INS"). The evidence must include a copy of both sides of any work authorization and copies of all documents submitted to and received from the INS regarding admission to the United States and a copy of any documentation submitted to the U.S. Department of Labor.

Qualifying nonimmigrant aliens . . . are not registered upon passing the examination. Such aliens will be given limited recognition under 37 CFR § 10.9(b) if recognition is consistent with the capacity of employment authorized by the INS. Documentation establishing applicant's qualification to receive limited recognition must be submitted with applicant's application by the filing deadline.

The bulletin goes on to state at pages 10 and 11 that:

The deadline for filing **all** application documents, **all** appropriate fees, **all** necessary supporting documents . . . is January 5, 2001. This means that the USPTO must receive the complete application . . . on or before the deadline date.

There will be no opportunity to file supplemental documents after January 5, 2001, to obtain admission to the April 2001 registration examination.

(emphases in original).

The logistics of administering the registration exam dictate that all necessary documents be filed well in advance of the exam. Since the exam is administered only twice each year, the USPTO receives a large number of applications for each exam date. Approximately 2000 applications are received for each exam and each application must be individually evaluated to determine whether the applicant meets the qualifications for registration. The applications must be evaluated to ensure that they are complete, that the required fees have been submitted, that the applicant has the required scientific and technical qualifications, and that no issues of moral character preclude registration. 37 CFR § 10.7.

In addition, the USPTO must arrange with the Office of Personnel Management (OPM) to administer the exam simultaneously at multiple sites across the country. The USPTO must notify OPM how many applicants will be taking the test at each site, and how many at each site require special accommodations. OPM personnel then arrange for rental of space appropriate for administering the exam. To allow sufficient time for space rental, the USPTO must provide OPM with final numbers regarding applicants and special accommodations at least six weeks prior to the exam date.

Thus, the filing deadlines are not set arbitrarily, but are selected to allow sufficient time for evaluation of each application and for arrangement of appropriate exam facilities at each test site. Therefore, applicants for the April 18, 2001, exam were required to file completed applications by January 12, 2001, so that the applications could be processed and the necessary arrangements could be made for administration of the nationwide exam.

It is undisputed that Petitioner did not file all necessary application documents by the filing deadline of January 12, 2001. However, under the terms of 37 CFR § 10.170, “[i]n an extraordinary situation, when justice requires, any requirement of the regulations of this part

which is not a requirement of the statutes may be suspended or waived by the [Director] or the [Director's] designee . . . on petition by any party.”

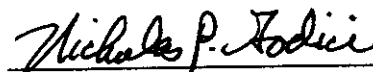
We recognize that Petitioner could not have filed all necessary documents by the January 12 deadline, since his H-1B1 approval notice was not issued until January 16<sup>1</sup>. However, the fact that Petitioner did not hold a qualifying visa on January 12 is hardly an extraordinary circumstance. Rather, the natural consequence of establishing a filing deadline is that some applicants will not be able to meet it. Further, justice does not require that the application deadline be waived for Petitioner. The exam will be given again in six months, and Petitioner, like all others who did not meet the January 12 deadline, may apply to take the exam at that time.

#### ORDER

For the reasons given above, the petition to waive the January 12, 2001, filing deadline for the April 18, 2001, exam is denied.

This is a final agency action.

MAY 23 2001



Nicholas P. Godici

Acting Under Secretary of Commerce for Intellectual  
Property and Acting Director of the United States  
Patent and Trademark Office

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<sup>1</sup>Of course, Petitioner did not submit all required documents even in his February 12 application supplement. Petitioner has attached additional documents to this petition, however, the Director will not consider documents not in the record before OED. 37 CFR § 10.2(c).