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## USCIS Wrongly Nixed Clinic's H-1B Visa Bid, Judge Says

By **Vin Gurrieri**

Law360, New York (March 11, 2015, 5:04 PM ET) -- A Washington federal judge on Wednesday ordered the U.S. Citizenship and Immigration Services to grant an H-1B temporary worker visa to a South Korean citizen, saying the agency disregarded relevant evidence when it denied a petition for her to work as a health care manager at an acupuncture clinic.

U.S. District Judge Ricardo S. Martinez found that USCIS committed an abuse of discretion by denying Chung Song Ja Corp.'s petition for an H-1B visa for Kyung Mi Lee, who had sought to obtain the health care manager position at an acupuncture and traditional Chinese medicine clinic in Lynnwood, Washington.

The judge's ruling — which granted a motion for summary judgment by CSJ and Lee while denying a competing motion by the government — concluded that the agency improperly determined that the position Lee would have filled did not qualify as a “specialty occupation” and that Lee was not qualified for the job.

“The court finds that USCIS abused its discretion in reaching a decision that was not in accordance with the statutory and regulatory framework, and its decision shall be reversed,” Judge Martinez said.

CSJ, an entity that has three employees, filed a Form I-129 Petition for Nonimmigrant Worker with USCIS in April 2013 that sought to classify Lee, a citizen of South Korea, as a nonimmigrant special occupation worker.

CSJ had sought to employ Lee as a part-time worker in its Lynnwood office for 20 hours per week and said in a supplement to its petition that Lee held the equivalent of a bachelor’s degree in management, according to court documents.

In her role, Lee would have performed such tasks as managing the administration of patients and their records, overseeing personnel matters, and coordinating personnel, finance and facility operations, according to court documents.

In June 2013, USCIS asked for additional evidence regarding the job offer, which CSJ provided.

But in November 2013, the H-1B visa application was denied on two grounds — CSJ had failed to demonstrate the offered position is a specialty occupation, and even if it did qualify as such, CSJ had not established that Lee was qualified for it because she had not obtained the equivalent of a specialized degree pertaining to the offered job.

About three months after the denial of the application, CSJ and Lee filed suit challenging the agency's conclusion. The plaintiffs argued that USCIS erroneously interpreted regulatory requirements, ignored evidence and misapplied clear legal standards when it reached its decision, according to court documents.

In his ruling, Judge Martinez found that the plaintiffs plainly met their burden to show that the position of a health care manager satisfies the criteria necessary to make it a specialty occupation.

As part of his ruling, Judge Martinez cited a California federal court's ruling **in January** that medical and health services managers constituted a specialty occupation in a case brought by a Michigan chiropractic clinic that sought to employ a Lebanese citizen.

As to Lee's qualifications for the job, Judge Martinez found that the USCIS abused its discretion in that regard as well.

The judge said USCIS arbitrarily discounted a report by a Duquesne University professor who concluded that Lee's three years of coursework in South Korea along with more than four years of applicable experience and training meant she had attained the equivalent of a bachelor of science in management from an accredited U.S. institution, and that those skills would allow her to perform the job at CSJ.

The judge said the agency "appears to have completely ignored" a letter from the dean of the Palumbo School of Business at Duquesne University saying that the professor was qualified to review foreign credentials in management, among other areas.

USCIS also ignored the fact that the professor is a consultant on foreign credential matters for companies such as Federal Express Corp., the Pittsburgh Pirates and Highmark Blue Cross Blue Shield, according to the ruling.

Further, there was no evidence to support USCIS' claim that the professor may have fabricated her report in some way, the judge said.

"For these reasons, the court finds that USCIS improperly determined that CSJ had failed to demonstrate that Ms. Lee had the equivalence to completion of a U.S. baccalaureate or higher degree in the specialty," Judge Martinez said. "Because the regulations only require Ms. Lee to meet one of the enumerated criteria, [the professor's] evaluation was enough to support the conclusion that she had."

William Frick, an attorney representing the plaintiffs, told Law360 Wednesday that "we were pleased to read the decision."

"We are hopeful that this decision and other recent decisions like the one ... in California, will pave a path for smaller U.S. businesses to benefit from H-1B specialty workers."

A representative for USCIS was not immediately available for comment Wednesday.

The plaintiffs are represented by William Frick of Law Office of William Frick PLLC.

The government is represented by Hans H. Chen of the U.S. Department of Justice.

The case is Chung Song Ja Corp. et al. v. U.S. Citizenship and Naturalization Service et al., case

number 2:14-cv-00177, in the U.S. District Court for the Western District of Washington.

--Editing by Kelly Duncan.

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