**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

*5107 Leesburg Pike, Suite 2000*
*Falls Church, Virginia 22041*

**Khalsa, Reena Kaur**
**Khalsa Attorneys at Law, P.L.C.**
**P.O. Box 1489**
**Sedona, AZ 86339**

**DHS/ICE Office of Chief Counsel - FLO**
**3250 N. Pinal Parkway Ave.**
**Florence, AZ 85132**

**Name: KASIM REDDY, SRIKANTH**

**A 208-198-222**

**Date of this notice: 11/18/2016**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John

EllisM
Userteam: Docket

**U.S. Department of Justice**
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A208 198 222 – Florence, AZ

Date: NOV 18 2016

In re: SRIKANTH KASIM REDDY

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Reena K. Khalsa, Esquire

ON BEHALF OF DHS: Nelson Echevarria-Tolentino
Assistant Chief Counsel

ORDER:

This Board has been advised that the Department of Homeland Security's (DHS) appeal has been withdrawn.[1] *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

FOR THE BOARD

[1] The record reflects that the DHS has also filed a motion to remand. The motion is deemed moot now that there is no longer anything pending before the Board.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
FLORENCE, ARIZONA

File: A208-198-222 June 30, 2016

In the Matter of

| | | |
|---|---|---|
| SRIKANTH KASIM REDDY | ) | IN REMOVAL PROCEEDINGS |
| RESPONDENT | ) | |

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act (INA), in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted in violation of this act or any other law of the United States.

APPLICATION: Termination of proceedings.

ON BEHALF OF RESPONDENT: REENA KAUR KHALSA, Esquire
P.O. Box 1489
Sedona, Arizona 86339

ON BEHALF OF DHS: NELSON ECHEVARRIA, Assistant Chief Counsel
Department of Homeland Security
Florence, Arizona

## DECISION AND ORDER OF THE IMMIGRATION JUDGE

### PROCEDURAL HISTORY

The respondent is a 28-year-old native and citizen of India. On April 8, 2016, the Department of Homeland Security issued a Notice to Appear (NTA) against the respondent alleging removability pursuant to Section 231(a)(1)(C)(i) of the Immigration

and Nationality Act, in that after admission as a nonimmigrant under 101(a)(15) of the Act, he failed to maintain or comply with the conditions of the nonimmigrant status under which he was admitted. Exhibit No. 1 (NTA). This NTA was lodged with the Court on April 14, 2016 in Florence, Arizona, where the respondent was being held in custody. The respondent appeared in Court the first time on April 18, 2016. On that date, the respondent was advised of the nature and purpose of the proceedings, as well as his rights in these proceedings. The respondent indicated that he wished to have time to get an attorney, and the matter was continued to June 30, 2016 to afford the respondent an opportunity to obtain representation.

Subsequently, on May 18, 2016, Department of Homeland Security (DHS) filed a Form I-261 with the Court containing additional factual allegations in lieu of two of the allegations set forth in the Notice to Appear and an additional charge of removability, that is, pursuant to Section 237(a)(1)(B), in lieu of the charge under Section 231(a)(1)(C)(i), that was in the Notice to Appear. In the Form I-261, which has been admitted into evidence as Exhibit No. 2, DHS withdrew the 237(a)(1)(C)(i) charge, lodging in its place the charge under 237(a)(1)(B).

Thereafter, the Court received a notice of entry of appearance as attorney, filed by the respondent's counsel, along with a written motion to terminate proceedings. That motion, along with numerous documents that are tabbed A through J, has been admitted into evidence as Exhibit No. 4.

On today's date, June 30, 2016, the respondent appeared in Court with his attorney, and the attorney submitted written pleadings in response to the Notice to Appear and the Form I-261. Those written pleadings are in the record as Exhibit No. 3. In the written pleadings, the respondent conceded proper service of the charging documents and admitted factual allegations 1, 2 and 3 in the Notice to Appear, denied

allegations 4, 5 and 6. In this regard, the Court notes that allegation 4 is in the Notice to Appear, which is Exhibit No. 1, and the allegations 5 and 6 are "in lieu of" factual allegations contained in the Form I-261 in Exhibit No. 2.

The Department of Homeland Security submitted three documents which have now been admitted into evidence. Exhibit No. 5 is a copy of a Form I-213, Record of Deportable/Inadmissible Alien, dated April 8, 2016. Exhibit No. 6 is a copy of a computer printout SEVIS, Student and Exchange Visitor Information System report. Exhibit No. 7 is a copy of a record of sworn statement in affidavit form. The Court notes that the affidavit in Exhibit No. 7 was prepared by an Immigration Officer of the U.S. Department of Homeland Security, Daniel.

The respondent has admitted alienage, has admitted that he is not a citizen or national of the United States, and has admitted that he was admitted to the United States, on or about September 8, 2015, as an F1 nonimmigrant student.

**REMOVABILITY**

In this case, the Court finds that the burden is on the Department of Homeland Security to establish that the respondent is removable as charged. DHS acknowledges that he was admitted as a nonimmigrant student, and there is no allegation that his admission as a nonimmigrant student was anything other than a lawful admission. So the burden now shifts to the Government to establish that he is removable because he has violated his nonimmigrant status in some way.

In analyzing this case, the Court notes that there is nothing in the Notice to Appear or the Form I-261 to specify a particular time for which the respondent was admitted. However, they have charged him with being removable under a section of law, 237(a)(1)(B), as a nonimmigrant who has remained in the United States for a time longer than permitted. The Court is troubled by this in that they have charged him with

staying longer than he was admitted for, but yet they have not stated specifically what the time limits on his stay at the time of admission were. However, the Court understands that F1 students are generally admitted for "duration of status." That is contained in the Department's regulations at 8 C.F.R. 214.2(f)(5), wherein it is stated except for commuter students . . . an F1 student is admitted for duration of status. Duration of status is defined at the time during which an F1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students or engaging in authorized practical training following completion of studies . . . Exhibit No. 4 contains a copy of a nonimmigrant visa in the name of the respondent bearing his photograph, that shows that he was issued an F1 nonimmigrant student visa by the American Consul in Chennai (Madras), India. The visa was issued on 21 August, 2015 with an expiration date of 19 August 2020. Stamped over the passport is an admission stamp from the Department of Homeland Security, Customs and Border Protection. While the copy is a little distorted because of the nature of a passport being folded or opened and placed down on a copy machine, the Court can read that it shows he was admitted at PHO and the Court understands PHO is a three letter designator for the Phoenix, Arizona port of entry. The date of his admission is September 8, 2015, and the class of admission is hand written F1 and immediately below that the initials or letters D/S, which the Court understands to stand for duration of status. The Court finds that the respondent was admitted as an F1 student on September 8, 2015 for the duration of his status. In this regard, there was no specific time frames attached to his admission, but under the regulations, the term duration of status, as stated above, is defined as the time during which an F1 student is pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students.

So, the question now before the Court is: when did the respondent's status as an F1 expire. In this regard, the Court notes that in the Form I-261, Exhibit No. 2, DHS alleges in allegation no. 5, "On April 5, 2016, your F1 visa was terminated." Allegation 6 then goes on to state, "You remained in the United States beyond April 5, 2016 without authorization from the Immigration and Nationalization Service or its successor, the Department of Homeland Security." As evidence that the respondent's F1 visa was terminated on April 5, the Department's Exhibit No. 6, SEVIS report, is submitted to show that the status was terminated on 4/5/16, and the termination reason given, "Otherwise failing to maintain status, student was terminated for fraud in connection with the University of Northern New Jersey."

Turning to the I-213 in Exhibit No. 5, the Court notes that the deportation officer who prepared this report indicates on page 2 of 3 that the respondent, Kasim Reddy, Srikanth, was encountered in connection with blank operation blank, a large-scale visa fraud investigation focusing on aliens enrolling at the University of Northern New Jersey, in an effort to maintain F1 nonimmigrant student status. The University of Northern New Jersey is not an established institution of learning or other recognized place of study but rather a fictitious school established by ICE, and for the record, the Court understands ICE to mean Immigration and Customs Enforcement, which never offered any actual classes or courses of study, either online or in person. This information about the University of Northern New Jersey being a fictitious school is corroborated by information submitted by the respondent in Exhibit No. 4, tab E, which contains a copy of a newspaper article from the New York Times regarding a sting operation set up by the Department of Homeland Security to ensnare criminals involved in student visa fraud. According to this information and other documents submitted as part of Exhibit 4, the Court understands that the University of Northern New Jersey is a fictitious

university set up by the Department of Homeland Security Investigations as part of a large-scale sting operation to locate and criminally prosecute those individuals who are involved in arranging fraudulent visas. The Court notes that in some of the articles contained in Exhibit No. 4, there is mention of a number of people being arrested and criminally prosecuted by the United States Attorney for visa fraud in connection with nonimmigrant F1 visas. It appears primarily that there were at least 21 people who were arrested as part of this operation, and these people were brokers who recruited foreign students to come to an institution that they knew would not have real classes. However, the Court notes that in this particular case, the respondent here today was admitted to the United States on a valid F1 visa to attend Grand Canyon University in Arizona. The Department has submitted no documentation to establish that the respondent failed to attend his classes at Grand Canyon University, but rather that he simply chose to transfer from Grand Canyon University, where he was studying as a nonimmigrant student, to another school for the purpose of obtaining coursework that was not available at Grand Canyon University.

The respondent has submitted a declaration, under Exhibit B of Exhibit 4 setting forth over a page-and-a-half in 16 numbered paragraphs his background, stating that he came to the United States and attended classes at Grand Canyon University, however, after attending some classes, he became interested in another field of study not offered at Grand Canyon and started researching other institutions that offered his desired field of study. In this regard, he indicates that he came across UNNJ, or the University of Northern New Jersey. He indicates that he prepared the necessary paperwork and contacted the appropriate personnel to affect a legal transfer from Grand Canyon University to the University of Northern New Jersey. He indicated that he got confirmation from University of Northern New Jersey that he had been accepted there

and in that regard, at tab I of Exhibit No. 4, he has a copy of a letter from the University of Northern New Jersey dated January 20, 2016, congratulating him, indicating that he had been selected for admission to the University of Northern New Jersey. The letter goes on to say that next steps in the admission process, or for information regarding acceptance and next steps in the admission process, please contact us at admissions@UNNJ.edu.

There is no evidence that has been submitted that indicates that this respondent had any knowledge whatsoever that the University of Northern New Jersey was anything other than it had been purported by the DHS Investigations people to be, and that is an accredited university. It appears evident to me, and I find, that this respondent was the innocent victim of an undercover sting operation set up by DHS to ensnare those individuals who were unlawfully and fraudulently recruiting foreign students for admission to the United States as nonimmigrant students. The affidavit or record of sworn statement in affidavit form that is Exhibit No. 7 contains no information or acknowledgement by the respondent that he knew that this school was anything other than a legitimate school, and he was asked in the sworn statement how he heard about the University of Northern New Jersey, he responded, "Looking online." The investigator asked him if he was referred by a recruiter, and he said no. Then the investigator says, if so, who is the recruiter, and the respondent answered, "Not a recruiter, I spoke to a person at UNNJ." Then he is asked how much he paid the recruiter, and he responded that he deposited $3,000 into an account for the contact person. He provided the information regarding the contact. Once again, there was no information in this statement that indicates the respondent had any idea whatsoever that the University of Northern New Jersey was a fake school set up as part of a sting operation, or that it was a fake school intended just to allow him to remain in the

United States. In his declaration, he indicated that the only reason he sought out the school was because of courses that he hoped were offered there that were not offered at Grand Canyon.

The Court finds very troubling the I-213 that is in Exhibit No. 5 wherein on page 2o of 3, in the second paragraph from the bottom, the deportation officer who prepared this document states, "F1 was obtained through fraudulent means, thus making subject present without proper Immigration documentation." There is absolutely no evidence whatsoever in the record to substantiate this statement by the deportation officer. In fact, the evidence proves entirely the opposite. The evidence proves that the respondent's F1 visa was obtained through legitimate channels. It was issued by the American Consulate in India for him to attend Grand Canyon University in Arizona. That is an approved school. The Government seems to be making a great deal out of the fact that other individuals have been involved in fraudulent student visas, and the Court does not dispute that there are many people who have used fraudulent visas to enter the United States. However, there is absolutely not one single piece of evidence in this record to establish that this respondent committed any kind of visa fraud or that he did anything at all illegal.

In fact, the Court is amazed that the Department of Homeland Security has pushed this particular case to the point that it has in charging this man with being removable from the United States. Not only charging that he is removable, but he has also been held in custody here since on or about April 8, which is three days after the SEVIS report indicates that his nonimmigrant status was terminated. And while I do not remember the regulations off the top of my head, I know that it is a commonly accepted practice when a person completes a course of study at a school or is terminated, he has a certain period of time during which he may either leave the United States or obtain

authorization to transfer to another institution. In this case, it appears that this man was given less than three days. His nonimmigrant status was terminated on April 5, according to the SEVIS report, and then he was arrested either two or three days later by the DHS officers. Not only was he arrested, but he was taken into custody, held without bond and placed in removal proceedings. Initially, when he was placed in removal proceedings he was charged with being removable under Section 237(a)(1)(C)(i) of the Act as a nonimmigrant who failed to maintain or comply with the conditions of the nonimmigrant status under which he was admitted. The Court notes that that charge was withdrawn on May 18, and the respondent was then charged with remaining in the United States for a time longer than permitted. However, there is nothing in the factual allegation that indicates what that time permitted really was. By regulations, it was for the duration of status.

In summary, after reviewing all of the documentary evidence submitted, the Court finds that the Department of Homeland Security has failed to establish that the respondent is removable as a nonimmigrant who remained in the United States for a time longer than permitted. The respondent was notified his status had been terminated on April 5, and he was then taken into custody on either April 7 or April 8, some two days after he was notified that his status had been terminated. He had no opportunity to request reinstatement in a timely fashion, although there is indication in Exhibit No. 4 that he attempted to reach out and obtain reinstatement through another university in Colorado.

In summary, the Court will not sustain the charge of removability, and the Court is going to grant the respondent's motion to terminate. Therefore, the following orders are entered.

## ORDERS

IT IS HEREBY ORDERED that the charge of removability contained in the Form I-261 is not sustained.

IT IS FURTHER ORDERED that these proceedings be terminated.

***Please see the next page for electronic signature***

ROBERT E. COUGHLON
Immigration Judge
Date: June 30, 2016

## APPEAL RIGHTS

Both parties have the right to appeal the decision in this case. Any appeal must be filed in a timely fashion to ensure that it is received at the Board of Immigration Appeals on or before 30 days from the date of service of this order.

//s//

Immigration Judge ROBERT E. COUGHLON

coughlor on September 20, 2016 at 2:42 PM GMT