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U.S. Department of Homeland Security  
20 Massachusetts Ave. NW, Rm. A3042  
Washington, DC 20529



U.S. Citizenship and Immigration Services



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FILE: SRC 03 223 54741 Office: TEXAS SERVICE CENTER

Date: JAN 05 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner describes itself as a development, real estate, tile printing business. It seeks to employ the beneficiary as a project coordinator and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the application for change of status on August 26, 2003 on the ground that the beneficiary had been admitted to the United States under the visa waiver program, which, as specified in 8 C.F.R. § 248.2(f), made him ineligible to change his nonimmigrant status under section 248 of the Act. The director advised that the beneficiary must depart the United States within six months to avoid being subject to a three- or ten-year bar to admission should another application for a visa or for admission to the United States be filed by him or on his behalf at a later date.

On his appeal form the petitioner explained that the beneficiary entered the United States under the visa waiver program because, although he had a B-1/B-2 visa valid indefinitely for multiple entries, he inadvertently left it in the United Kingdom when he came to the United States on May 25, 2003. Once the H-1B petition was approved, the petitioner stated, the beneficiary intended to return to the United Kingdom to pick up his visa at the U.S. embassy in London. The regulation at 8 C.F.R. § 248.3(g) provides that “[t]here is no appeal from the denial of the application under this chapter.” Thus, there is no legal basis for the instant appeal.

The director mistakenly advised the petitioner that it could appeal the denial of the application for change of status. The AAO may not adjudicate an appeal over which it has no jurisdiction.

**ORDER:** The appeal is rejected.