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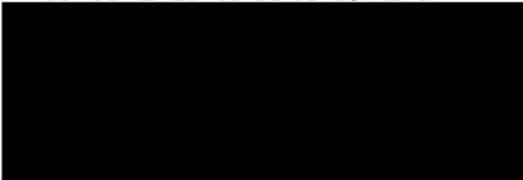
FILE: LIN 04 071 50259 Office: NEBRASKA SERVICE CENTER Date: **MAR 07 2006**

IN RE: Petitioner:
Beneficiary:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents 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 director of the Nebraska Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed. The petition is denied.

The petitioner is an organization providing services to the developmentally disabled, with 365 employees. It seeks to extend its employment of the beneficiary by 245 days. The director denied an extension of the beneficiary's H-1B status because he determined that it would exceed the statutory six-year limit imposed on the stay of individuals admitted to the United States in H or L status.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's letter of denial; and Form I-290B, with a letter from counsel and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

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), defines an H-1B nonimmigrant as "[a]n alien who is coming temporarily to the United States to perform services...in a specialty occupation...." Section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4) limits the period of authorized admission for such nonimmigrants: "In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years." This restriction is further explained at 8 C.F.R. § 214.2(h)(13)(iii)(A), which states:

An H-1B alien in a specialty occupation or an alien of distinguished merit and ability who has spent six years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) or (L) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

On appeal, counsel contends that the director erroneously denied a 245-day extension of the beneficiary's H-1B status beyond the six-year limit. He asserts that the extension is warranted as the petitioner does not employ the beneficiary as a special education teacher during the summer and should, therefore, be allowed to recapture this "non-service" period. However, counsel's reasoning reflects a misunderstanding of the tolling of the six-year time period.

As noted above, section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4) imposes a six-year limit on the "period of authorized admission" of H-1B nonimmigrants. Section 101(a)(13)(A) of the Act, 8 U.S.C. § 1103(A), defines "admission" and "admitted" as "the lawful entry of the alien in the United States after inspection and authorization by an immigration officer." The plain language of the Act, therefore, indicates that the six-year period of H-1B status accrues after admission into the United States. This construction is supported and explained by the court in *Nair v. Coultice*, 162 F. Supp. 2d 1209 (S.D. Cal. 2001).

In the instant case, the beneficiary was previously approved for H-4 classification from January 10, 1998 until January 19, 2001 and for H-1B status from January 19, 2001 until January 10, 2004. Therefore, the tolling of the six-year period began on January 10, 1998, to be interrupted only by the beneficiary's departure from the United States. However, the record does not indicate that the beneficiary has been outside the United States

during either of these periods, including the summer breaks in her employment. Accordingly, she has reached the six-year limit on her admission as an H nonimmigrant. The fact that the beneficiary was not performing as a special education teacher for 245 days while in H-1B status does not affect her time in that status.

For the reasons already discussed, the petitioner has not established eligibility for an extension of the beneficiary's H-1B stay in the United States. Accordingly, the AAO shall not disturb the decision of the director.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.