

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

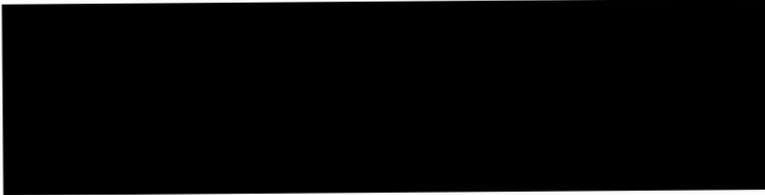
U.S. Department of Homeland Security  
20 Massachusetts Ave. NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

D1

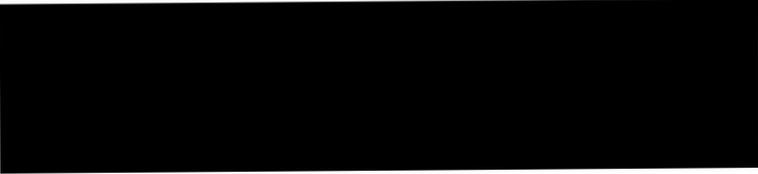


FILE: LIN 04 195 51451 Office: NEBRASKA SERVICE CENTER Date: NOV 03 2006

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:



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, Chief  
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 sustained. The petition will be approved.

The petitioner is a regional hospital. It seeks to employ the beneficiary as a medical internist and continue her classification 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)(i)(b).

In his decision, dated January 6, 2005, the director denied the petition – which sought a three-month extension of the beneficiary’s H-1B status from July 1 to September 30, 2004 – on the ground that the requested validity date expired during the processing of the petition, as a result of which no further benefit could be afforded on the petition.

In his appeal brief, filed on January 14, 2005, counsel contends that the director misapplied the law and failed to consider the benefit to the beneficiary of an approval notice to establish her legal status in the United States during the time period of July 1 to September 30, 2004. The record reflects that the beneficiary was originally granted H-1B status with another employer, valid for a three-year period from July 2, 2001 to June 30, 2004, and that the petitioner timely filed the instant petition on June 28, 2004. Counsel states that a third employer, Internal Medicine Associates, filed a new H-1B petition on behalf of the beneficiary on July 12, 2004 seeking a three-year continuation of her H-1B status and an extension of stay from October 1, 2004 to September 30, 2007. The denial of the instant petition negatively impacts the subsequent petition filed by Internal Medicine Associates, counsel points out, because the beneficiary might not be considered in valid H-1B status at the time of its filing and be required to depart the United States to apply for a new H-1B visa.

A review of Citizenship and Immigration Services (CIS) records indicates that the petition for a continuation of H-1B status and an extension of stay filed by Internal Medicine Associates on July 12, 2004 (receipt no. LIN 04 205 54764) has been approved, with a validity period of February 25, 2005 to July 2, 2007. In making that determination the director would also have found that the beneficiary was in valid H-1B status at the time the petition was filed.

Based on the evidence of record, the AAO determines that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in that occupation. Accordingly, the beneficiary will be granted H-1B status for the requested period of July 1, 2004 to September 30, 2004.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

**ORDER:** The appeal is sustained. The petition is approved.