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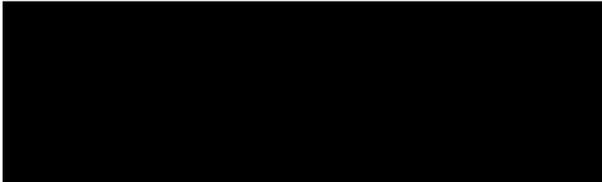
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 045 53382 Office: NEBRASKA SERVICE CENTER Date: AUG 20 2007

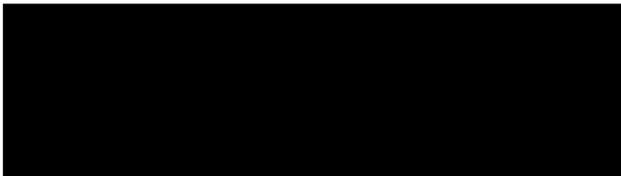
IN RE: Petitioner:
Beneficiary:



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:

COURTESY COPY TO:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, issued a decision that describes itself as a revocation of the approval of the petition that had been earlier granted in this matter. The decision's closing directive states: "It is ordered that the classification be approved, but the request for an extension of stay be denied." The decision includes a notification to the petitioner that it could file an appeal with the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The appeal will be rejected, as the AAO does not have jurisdiction over the adverse aspect of the director's decision, namely, the director's determination and order regarding the validity of the beneficiary's stay in the United States.

The petitioner, a school district, has been employing the beneficiary as a bilingual community intervention specialist, pursuant to an H-1B petition filed on November 27, 2002 and approved by the service center director on January 29, 2003 for a period ending on December 1, 2005.

On August 12, 2005, the director issued to the petitioner a Notice of Intent to Revoke that focused on information to the effect that, prior to the approval of the petition, the beneficiary had become inadmissible by working while in B visa status.

On January 4, 2006, the director issued the decision that is the subject of this appeal. At page 1, the director styled this decision as ordering "that the approval of your Petition for Nonimmigrant Worker be revoked;" but the specific order, at the end of page 2 of the decision, upholds the beneficiary's H-1B classification, stating: "It is ordered that the classification be approved, but the request for extension of stay be denied." So stated, this order affirms rather than revokes the previous approval of the beneficiary's H-1B classification and nullifies the extension of stay that had been previously granted.¹

Accordingly, the only issue before the AAO is the director's determination that the beneficiary's "extension of stay be denied" due to inadmissibility based upon a violation of her B visa status.

The AAO must reject the appeal because the adverse aspect of the director's decision applies only to the extension of stay that had been granted. Pursuant to 8 C.F.R. § 214.1(c)(5), there is no appeal from the denial of an application for extension of stay filed on a Form I-129. Therefore, the director's action regarding the validity of the beneficiary's stay in the United States is not a matter within the AAO's jurisdiction.

ORDER: The appeal is rejected.

¹ The AAO notes that the director incorrectly cited 8 C.F.R. § 214.2(h)(11)(iii)(A) as authority to revoke an extension of stay. This regulation addresses the procedures for revoking the validity of an H-1B petition classification, and does not provide procedures for revoking a change of status or extension of stay. The more appropriate procedure would have been for the director to reopen the change of status/extension of stay application on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). As the petitioner received notice and an opportunity to respond as required by 8 C.F.R. § 103.5(a)(5)(ii), the incorrect citation of the revocation regulation did not prejudice the petitioner.