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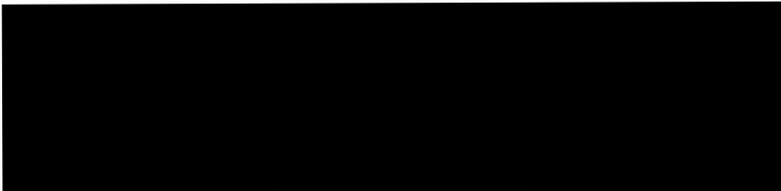
FILE: WAC 07 004 50114 Office: CALIFORNIA SERVICE CENTER Date: **JUL 22 2008**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the request for continuation of the beneficiary's previously approved employment without change with the employer. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The petition will be remanded to the director for decision on the petition.

The petitioner is a credit union that seeks to extend its authorization to employ the beneficiary as a financial analyst. The petitioner, therefore, endeavors to classify the beneficiary 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 petition because it was filed after the beneficiary's valid H-1B status had expired, and thus the beneficiary had not maintained his nonimmigrant status.

On appeal, counsel states, in part:

The extension of stay was denied on the sole basis that the I-129 was untimely filed (through the admitted egregious errors of former counsel). The underlying H-1B petition itself has yet to be ruled on. . . . This failure to rule on the underlying petition is tantamount to a denial of the petition as it leaves [the beneficiary] with no I-797 consular/border approval notice with which to apply for entry to the U.S. in H-1B status.

As discussed above, the director found that the beneficiary had not maintained his nonimmigrant status because his authorized stay expired prior to the filing of the present petition. The director advised the petitioner that the beneficiary was required to depart the United States.

The AAO notes that although the beneficiary was out of status and does not appear to be eligible for an extension of stay, the director failed to rule on the merits of the underlying petition. 8 C.F.R. § 214.2(h)(15)(i) provides that when the petitioner has applied for both an extension of stay and a petition extension on the same form I-129, the director shall make a separate determination on each.

Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form I-129 or I-539. Thus, the AAO has no jurisdiction over this appeal, which must be rejected. The petitioner's appeal will be remanded to the director to adjudicate the merits of the petition. The director shall review all the evidence of record, including the evidence submitted on appeal.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is rejected. The petition is remanded to the director for further consideration and entry of a new decision.