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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 07 143 53821 Office: VERMONT SERVICE CENTER Date: SEP 30 2008

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director approved the nonimmigrant visa petition but denied the request for extension of the beneficiary's stay. On motion, the director affirmed the decision to deny the request for extension of the beneficiary's stay. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, as the AAO lacks jurisdiction over this matter.

The petitioner is a pharmacy that seeks to employ the beneficiary as a graduate pharmacy intern. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, received at the service center on April 23, 2007; (2) the director's approval notice, dated May 2, 2007; (3) the director's May 2, 2007 notice informing the petitioner that, although the petition had been approved, the request to extend the beneficiary's status had been denied; (4) the first Form I-290B and supporting documentation, received at the service center on May 11, 2007; (5) the director's January 9, 2008 letter affirming his May 2, 2007 decision; and (6) the second Form I-290B and supporting documentation, received at the service center on February 11, 2008. The AAO reviewed the record in its entirety before issuing its decision.

As noted previously, the instant petition was filed on April 23, 2007 and approved on May 2, 2007. Although the petition was approved, the director did not approve the request for extension of the beneficiary's nonimmigrant status. On January 9, 2008, the director affirmed his decision to deny the petitioner's request for extension of the beneficiary's stay. On appeal, counsel and the petitioner contend that the director should have extended the beneficiary's nonimmigrant status at the time the instant petition was approved.

However, the AAO lacks jurisdiction over this matter. A request for change of status and extension of stay in an H-1B application is not a petition within the meaning of section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1), and does not confer any of the appeal rights normally associated with a petition. The Form I-129 in this context is merely the vehicle by which information is collected to make a determination on the change of status application. An extension of stay application is adjudicated under 8 C.F.R. § 248.3(a).

The regulation at 8 C.F.R. § 248.3(g) states the following:

Denial of application. When the application is denied, the applicant shall be notified of the decision and the reasons for the denial. There is no appeal from the denial of the application under this chapter.

The AAO has no jurisdiction over this matter, as issues surrounding the beneficiary's maintenance of nonimmigrant status are within the sole discretion of the director. Therefore, the appeal will be rejected.

Further, the AAO notes that newly-retained counsel and the petitioner assert that an immigration consultant who assisted the petitioner in filing a previous petition for this beneficiary, which was denied, "made a series of mistakes." However, there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. See 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. Cf. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10

(1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

ORDER: The appeal is rejected.