

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a diversified manufacturing and services business with 340,000 employees and a gross annual income of \$129 billion. It seeks to extend its authorization to employ the beneficiary as an advanced process technology engineer for a period of four months and nine days. The director determined the beneficiary had completed his six years of H-1B status (from April 11, 1995 through April 10, 2001) and therefore was not eligible for any further extension.

On appeal, counsel argues that the beneficiary's 9-day absence (March 20 - March 28, 1999) from the United States when the beneficiary was not employed were "not interruptive of the alien's employment in the United States." Counsel requests that the Service grant a nunc pro tunc extension for such nine days. (It is noted that the beneficiary has since been granted a nonimmigrant O-1 classification with an authorized period of stay from April 16, 2001 to April 15, 2004.)

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(g)(4) of the Act states that:

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.

Counsel argues that the beneficiary is entitled to an additional nunc pro tunc extension from March 9, 2001 to April 19, 2001. Notwithstanding the beneficiary's 9-day absence from the United States when he was unemployed, the record demonstrates that the beneficiary has now completed his six-year limit in H-1B status. As such, he is ineligible for any further extensions.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.