



U.S. Citizenship
and Immigration
Services



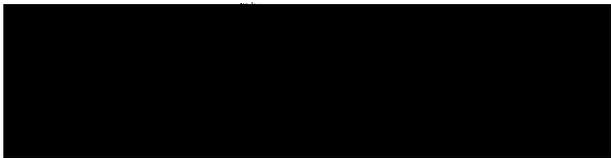
JUN 24 2004

FILE: EAC 02 267 51309 Office: VERMONT SERVICE CENTER Date:

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 Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an import and sales business that seeks to employ the beneficiary as an administrator/director. The petitioner 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 on November 25, 2002, because the beneficiary did not fall within one of the exceptions to the six-year maximum period of stay in H-1B status provided for in the American Competitiveness in the Twenty First Century Act of 2000 (Public Law 106-313), 114 Stat. 1253 (AC21). The beneficiary had exceeded six years in H-1B status; thus, the director denied the instant petition to extend that status.

On appeal, counsel asserts that the beneficiary is in fact eligible for a seventh-year extension based on the "DOJ Authorization Act" [sic].

Effective November 2, 2002, the 21st Century Department of Justice Appropriations Act (Public Law 107-273) 116 Stat. 1836 (21st century DOJ Appropriations Act) amended § 106(a) of AC21 to permit H-1B status beyond the six-year maximum period if 365 days or more have elapsed since the filing of any of the following:

- (1) Any application for labor certification under section 212(a)(5)(A) of such Act...in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act...
- (2) A petition describe in section 204(b) of such Act...to accord the alien a status under section 203(b) of such Act.

The record contains a copy of a U.S. Postal Service Express Mail receipt showing that counsel sent a document to the Alien Labor Certification Section on August 29, 2001. The record also contains copies of documents indicating that counsel handled an application for labor certification on behalf of the beneficiary. Counsel states that these documents show that the beneficiary had a labor certification application pending for over one year prior to the filing of the instant petition. According to counsel, the beneficiary is thus eligible for an extension of H-1B status beyond six years under the provisions of the DOJ Appropriations Act.

It is noted, however, that the file contains no evidence that the application for labor certification was actually pending. The copies of the postal receipt and forms prepared by counsel do not demonstrate that the labor certification was received and was pending. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Moreover, according to the copy of the postal receipt, the application for labor certification for the beneficiary was sent on August 29, 2001. The instant petition was filed on August 16, 2002. It is clear that, even if the

documentation on record is accepted as evidence of a pending labor certification application, the latter was not pending for over one year prior to the filing of this petition. Neither does the record demonstrate that there was an employment-based immigrant petition pending for over one year prior to filing this petition. Therefore, the beneficiary does not fall within the exceptions to the six-year cap set forth in AC21, and the extension cannot be granted. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

ORDER: The appeal is dismissed. The petition is denied.