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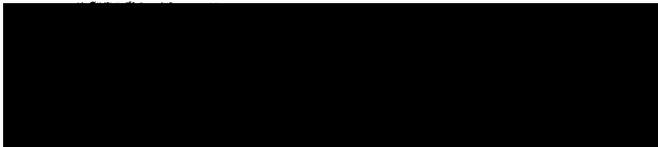


FILE: WAC 02 050 53881 Office: CALIFORNIA SERVICE CENTER Date: JUL 14 2002

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 rejected.

The petitioner is a film and TV post production company that employs the petitioner as an electronics and acoustics engineer and wishes to extend his H-1B status for a seventh year of eligibility, 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 determined that the beneficiary was no longer in a nonimmigrant status and was not eligible for an extension of his H-1B status. The director found that the petitioner had not established sufficient extraordinary circumstances to excuse the submission of the Form I-129 petition after the beneficiary's legal status had expired, and denied the visa petition.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation filed December 5, 2001; (2) the director's decision dated May 29, 2002; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director stated that he denied the petition under 8 C.F.R. § 214.1(c)(4), which indicates that an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status. Counsel asserts that the beneficiary was maintaining status because it filed a motion to reopen and reconsider a previous CIS decision granting the beneficiary a three-month extension of stay rather than a one-year extension of stay.<sup>1</sup>

In general, section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4) provides that: "[T]he period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years." However, the amended American Competitiveness in the Twenty-First Century Act (AC21) removes the six-year limitation on the authorized period of stay in H-1B visa status for certain aliens whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays, and broadens the class of H-1B nonimmigrants who may avail themselves of this provision. As amended by § 11030A(a) of the 21<sup>st</sup> Century Department of Justice (DOJ) Appropriations Act, § 106(a) of AC21 allows CIS to extend the stay of an alien who has reached the maximum period of stay in H-1B visa status if an application for alien labor certification has been pending for a year at the time of filing an application for a seventh year extension, or if other conditions have been met.

The record reflects that the beneficiary had an alien certification application filed on his behalf more than a year prior to the filing of the instant petition. The director did not question the beneficiary's eligibility for the seventh year extension under the provisions of AC21.

The sole issue in the director's decision, and that is before the AAO on appeal, is whether the beneficiary was in status at the time the petition for the seventh year extension was filed, and thus whether the extension was properly denied. As indicated above, the director denied the extension of stay under the regulation at 8 C.F.R. § 214.1(c)(4). The regulation at 8 C.F.R. § 214.1(c)(5) provides that: "There is no appeal from the denial of an application for extension of stay filed on Form I-129." As the appeal was improperly filed, it must be rejected. Although the director sent a form letter accompanying the denial to the petitioner indicating that the denial may be appealed, this

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<sup>1</sup> The AAO notes that the record of proceeding contains no indication that counsel or the petitioner paid the required \$110.00 filing fee to accompany its letter requesting a reopening, and that CIS records indicate no motion accompanied by the required fee was ever filed.

error on the part of the director does not supercede the regulatory provision of law prohibiting the appeal of the denial of an extension of stay.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is rejected.