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U.S. Citizenship
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APR 11 2005

FILE: WAC 00 075 51952 Office: CALIFORNIA SERVICE CENTER Date:

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, 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 sustained. The petition will be approved.

The petitioner is a long-term nursing facility providing health and nursing services to disabled elderly persons. In order to continue employing the beneficiary as a social service director, the petitioner endeavors to continue her classification as a non-immigrant 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 the basis that approval of the petition would result in the beneficiary's exceeding the six-year limitation that 8 C.F.R. § 214.2(h)(13)(iii) sets on the time that a person may remain in the United States in H-1B status. On appeal, counsel submits a brief and supporting documentation to establish that the director erred in finding that the beneficiary's in-status stay in the United States began on December 1, 1993 rather than on June 14, 1995, the date maintained by counsel and the beneficiary.

Upon review of the entire record, the AAO determines that counsel has successfully refuted the director's finding. The record before the AAO contains no explanation or supporting documentation as to how the director arrived at the December 1993 date. On the other hand, the record contains ample direct and circumstantial evidence to support June 14, 1995 as the date on which the beneficiary began her stay in H-1B status. By calculation of time from this later date, approval of the petition does not exceed the aforementioned six-year limitation. Therefore, the director's determination on the time-in-status issue was erroneous.

In visa petition proceedings, 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 met that burden.

ORDER: The appeal is sustained. The petition is approved.