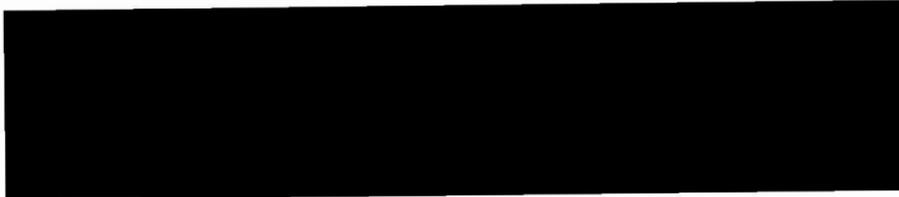


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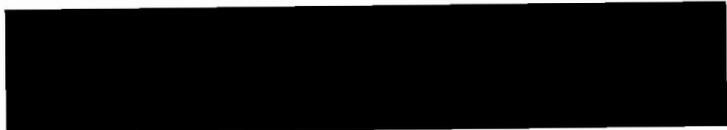
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FILE: EAC 04 265 52072 Office: VERMONT SERVICE CENTER Date: JUL 14 2006

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:

SELF-REPRESENTED

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 dismissed. The petition will be denied.

The petitioner is a community college that seeks to employ the beneficiary as an assistant professor of chemistry. 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 because the beneficiary had remained in the United States in H-1B status for longer than six years and was not eligible for a further extension of the H-1B visa. The director also noted that the petition was filed after the beneficiary's authorized period of stay in H-1B status had expired.

On appeal, the petitioner submits a statement.

The record of proceeding before the AAO includes: (1) Form I-129 and supporting documentation, (2) the director's denial letter, and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The record indicates that the beneficiary was admitted to the United States in H-1B status on August 4, 1996. CIS records reflect that the beneficiary maintained continuous H-1B visa status until August 16, 2004. There is no evidence in the record to indicate that the beneficiary has left the United States since her entry in August 1996. The instant petition for a visa extension was initially rejected for lack of fee on September 28, 2004, but accepted as properly filed on November 12, 2004.

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] may not exceed 6 years." 8 C.F.R. § 214.2(h)(14) provides, in part, that "[a] request for a petition extension may be filed only if the validity of the original petition has not expired." 8 C.F.R. § 214.2(h)(15) provides, in part, that "[w]hen the total period of stay in an H classification has been reached, no further extensions may be granted." The record reflects both that the request for extension was filed after the expiration of the validity of the original petition, and that the maximum period of stay in H-1B classification has been reached. Thus, the director properly denied the petition.

The petitioner states on appeal that the beneficiary is eligible for an exemption to the maximum six-year period of stay because she meets the requirements for an extension of stay under the "American Competitiveness in the Twenty-First Century Act," (AC-21) as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act" (DOJ Authorization Act).

AC-21 removes the six-year limitation on the authorized period of stay in H-1B status for certain aliens whose labor certification applications or employment-based immigrant petitions remain undecided due to lengthy adjudication delays and broadens the class of H-1B nonimmigrants who may avail themselves of this provision. Section 106 of AC-21, as amended by section 11030(A)(a) and (b) of the 21st Century Department of Justice Appropriations Act, reads as follows:

- (a) EXEMPTION FROM LIMITATION – The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of

authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(B) of such Act (8 U.S.C. § 1101 (a)(15)(H)(i)(B)), 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 (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).
 - (2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.
- (b) EXTENSION OF H-1B WORKER STATUS – The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one year increments until such time as a final decision is made –
- (1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;
 - (2) to deny the petition described in subsection (a)(2); or
 - (3) to grant or deny the alien’s application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.

There is no evidence in the record to show that the petitioner has filed a labor certification application or employment-based immigrant petition on the beneficiary’s behalf. Indeed, the petitioner indicates in its statement that it “anticipat[es] filing an I-140 application and/or making application under Program Electronic Review Management (PERM) for [the beneficiary],” but has not done so to date. Not having made such a filing, the petitioner cannot benefit from the provisions of AC-21. Without evidence showing that the beneficiary’s authorized stay in H-1B status did not exceed 6 years as indicated in the record, the beneficiary does not qualify for an extension of H-1B status pursuant to section 214(g)(4) of the Act.

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.