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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

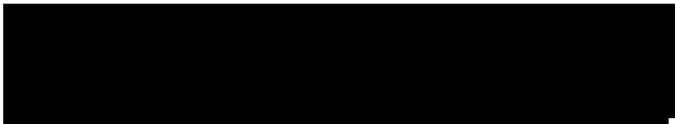
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FILE: WAC 05 131 50397 Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2007

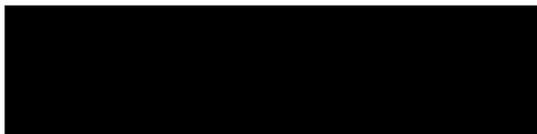
IN RE: Petitioner:



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, Chief
Administrative Appeals Office

DISCUSSION: The petitioner filed a Form I-129 petition for new employment on April 4, 2005, also requesting a change of status and extension of stay. The director subsequently approved the Form I-129 petition, but denied the petitioner's request for a change of status and extension of stay. Following a series of motions filed by the petitioner, the director entered a decision on June 13, 2006 (which is the subject of this appeal) dismissing the petitioner's third motion to reopen/reconsider. Specifically, the director noted the following procedural history in denying that motion:

1. The applicant filed a Form I-129 petition for new employment (seeking H-1B status) on April 4, 2005. On May 19, 2005, U.S. Citizenship and Immigration Services (USCIS) approved the H-1B petition and requested job classification, but denied the request for change of status from B2 to H-1B;
2. On June 14, 2005, the applicant filed a motion to reopen/reconsider, and that motion was denied on November 21, 2005;
3. On December 19, 2005, the applicant filed a second motion to reopen/reconsider, which was also dismissed;
4. On May 2, 2006, the applicant filed a third motion to reopen/reconsider, which was dismissed by the director's decision dated June 13, 2006.

The petitioner then filed a Form I-290B appealing the director's decision (June 13, 2006) which denied the petitioner's third motion to reopen/reconsider. The director denied the petitioner's motion to reopen/reconsider on the grounds that the beneficiary was not entitled to a change of status from B2 to H-1B. The appeal will be rejected as there is no decision of the director denying a petition that is within the jurisdiction of the Administrative Appeals Office (AAO).

The petitioner is seeking an extension of status on behalf of the beneficiary under 8 C.F.R. § 214.1. The director's denial of the petitioner's request for an extension of status is not subject to appeal. 8 C.F.R. § 214.1(c)(5). Thus, the AAO has no jurisdiction over the subject matter of this appeal.

It should be further noted that the Form I-290B initiating this appeal was received by USCIS and filed of record on July 28, 2006, 45 days after entry of the decision appealed from. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). Thus, the appeal was untimely and would be further subject to rejection had it been filed with regard to a decision within the AAO's jurisdiction.

ORDER: The appeal is rejected.