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

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FILE: EAC 05 252 50354 Office: VERMONT SERVICE CENTER Date: **DEC 04 2007**

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:

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, Chief
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 shall be dismissed. The petition will be denied.

The petitioner is a software development and consulting business that seeks to extend for a seventh year the beneficiary's classification as a nonimmigrant worker in a specialty occupation (H-1B status) 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 not entitled to be employed for a seventh year under the provisions of the "American Competitiveness in the Twenty-First Century Act," (AC21) and the "Twenty-First Century Department of Justice Appropriations Authorization Act" (21st Century DOJ Appropriations Authorization Act) because the I-140 filed on his behalf was denied.

On appeal, the petitioner's president submits a letter and additional documentation, including a copy of a Form I-797C, Notice of Action, to show that the denial of an I-140 petition filed on behalf of the beneficiary had been appealed. The petitioner's president requests that the instant appeal be placed on hold until the adjudication of the appeal for the denied I-140 petition.

The beneficiary in the instant case has been the beneficiary of a series of approved H-1B petitions, valid from November 3, 1998 to April 1, 2001, from April 9, 1999 to February 5, 2002, from August 1, 2000 to July 31, 2003, and from March 12, 2002 to November 4, 2004. The evidence of record indicates that the petitioner filed another H-1B petition on behalf of the beneficiary on January 20, 2005, and filed the instant petition on September 20, 2005. The petitioner also filed an I-140 petition on behalf of the beneficiary on October 25, 2005, which was denied on June 5, 2006. On appeal, the petitioner requests that the instant appeal be placed on hold until the adjudication of the appeal of the denied I-140 petition. CIS records, however, reflect that the petitioner's appeal of the denied I-140 petition was dismissed on September 20, 2007.

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, 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 § 11030(A)(a) of the 21st Century DOJ Appropriations Authorization Act, § 106(a) of AC21 reads:

(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.

Section 11030(A)(b) of the 21st Century DOJ Appropriations Authorization Act amended § 106(a) of AC21 to read:

(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.

As discussed above, the petitioner's appeal of the denied I-140 petition was dismissed on September 20, 2007. As the record reflects that the beneficiary has reached the six-year maximum allowable period of stay as an H-1B nonimmigrant, and the petitioner's I-140 petition filed on behalf of the beneficiary has been denied, the beneficiary therefore is not eligible for an exemption from the six-year limitation on his H-1B classification under AC21 section 106(a), and an extension of his H-1B status for a seventh year under AC21 section 106(b). In accordance with section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), limiting the authorized period of admission for an H-1B nonimmigrant to six years, the extension petition must be denied. Accordingly, the appeal will be dismissed, and the petition will be denied.

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.