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U.S. Citizenship
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FILE: LIN 05 202 51725 Office: NEBRASKA SERVICE CENTER

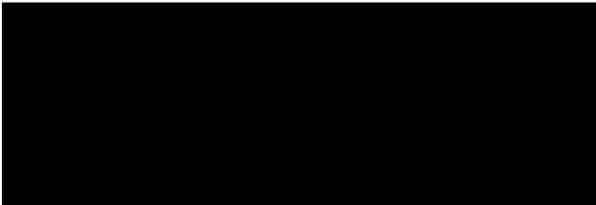
Date: OCT 31 200

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 materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The appeal will be rejected, as it was filed on behalf of the beneficiary only. The beneficiary was the signator on the Form G-28 that was filed with the instant appeal. An appeal may not be filed on behalf of a person that is not a party of the underlying petition, and CIS regulations specifically state that a beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not a recognized party, the beneficiary is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B).

The AAO notes that even if the correct person had filed the appeal, the appeal would be dismissed. The director denied the petition on the ground that the beneficiary, who had already spent six years in the United States in H-1B status, did not qualify for an exemption from the statutory six-year limit because he was not in valid H-1B status at the time the instant petition was filed. In accordance with 8 C.F.R. § 103.2(a)(7)(i) an application received in a Citizenship and Immigration Service (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct file. CIS received the instant petition on June 24, 2005. As the beneficiary's H-1B status expired on May 1, 2005, he was no longer in valid H-1B status at the time of filing, and the director found that he was ineligible for the requested extension of stay in H-1B status.

The requirement that the beneficiary be in valid H-1B status to be eligible for an exemption from the normal six-year limitation is clear in subsection (b) of section 106, which is entitled "extension of H-1B worker status" and provides for extensions of stay in one-year increments for qualified aliens. The AAO notes that the regulation at 8 C.F.R. § 214.2(h)(14) provides in general with respect to H-1B workers that "[a] request for a petition extension may be filed only if the validity of the original petition has not expired."

This interpretation is supported by the memorandum of [REDACTED] for Operations, CIS, *Guidance for Processing H-1B petitions as Affected by the Twenty-First Century Department of Justice Appropriations Authorization Act (Public Law 107-273)*, HQBCIS 70/6.2.8-P, dated April 24, 2003. The memorandum states on page two: "The request for an extension of status must establish that the alien beneficiary is in valid H-1B status at the time the petition (Form I-129) is filed with the [] CIS. An extension of stay may not be approved for an applicant who failed to maintain the previously accorded [H-1B] status, or where such status expired before the application or petition was filed."

Based on the foregoing analysis, the AAO notes that the beneficiary would not be eligible under AC21 for a one-year extension of stay in H-1B status.

As the beneficiary, not the petitioner, filed the appeal, the appeal will be rejected.

ORDER: The appeal is rejected. The petition is denied.