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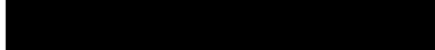
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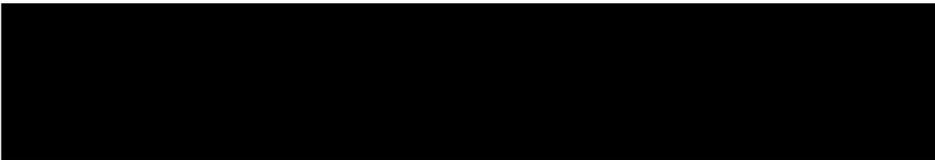
D-2

FILE: LIN 06 008 51192 Office: NEBRASKA SERVICE CENTER Date: **SEP 10 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 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 an architecture and design firm that employs the beneficiary as an architectural drafter. It seeks continuation of the beneficiary's previously approved H-1B employment without change. 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, after the beneficiary had completed six full years allowed under the H-1B classification, he had not maintained a valid H-1B status, and, therefore, did not satisfy the requirements for an extension of stay under 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). The director determined that, as the beneficiary's status was changed from H-1B to B-2 visitor for pleasure, he was no longer maintaining status as an H nonimmigrant and therefore not entitled to be employed for a seventh year under the provisions of AC21.

On appeal, counsel submits a brief.

The beneficiary in the instant case has been the beneficiary of a series of approved H-1B petitions, valid from June 22, 1999 to January 24, 2002, from January 13, 2001 to November 1, 2003, and from November 19, 2003 to June 21, 2005. Another H-1B petition approved on behalf of the beneficiary, valid from October 17, 2005 to August 31, 2006, was revoked because, as of the date of its filing on July 20, 2005, the beneficiary's H-1B status had expired. It is noted that on June 22, 2005, the beneficiary filed a Form I-539, Application to Extend/Change Nonimmigrant Status, from H-1B to B-2 visitor for pleasure, which was approved, valid from October 19, 2005 to December 1, 2005. In a letter dated January 12, 2005, the Illinois Department of Employment Security (IDES) confirmed that the petitioner filed an alien labor certification application for the beneficiary on August 30, 2004. The record also reflects that the instant petition was filed on October 11, 2005, and denied by the director on February 23, 2006. On appeal, counsel states that the director's decision was inconsistent with the law as written, which does not require the alien to maintain H-1B status. Counsel states that for this reason, the petition should be approved.

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.

The instant petition for an extension of the beneficiary's previously approved H-1B employment was filed on October 11, 2005, after the expiration of the original H-1B petition on June 21, 2005. 8 C.F.R. § 214.2(h)(14) states that a "petition extension" must be filed prior to the expiration of "the original [H-1B] petition." The beneficiary was no longer in H-1B status at the time that 365 days from filing the labor certification or immigrant petition had run. Therefore, the beneficiary was 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), at the time his extension petition was filed. 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.