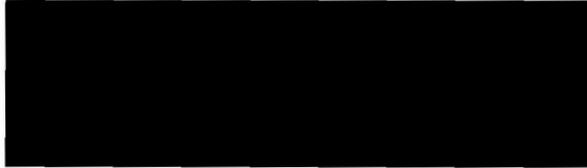




U.S. Citizenship
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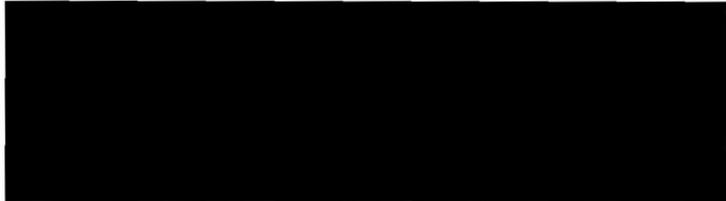
DZ

FILE: WAC 07 064 51352 Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2008**

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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved until April 18, 2007.

The petitioner is an information systems services and consulting business that seeks to employ the beneficiary as a systems analyst/programmer. The petitioner, therefore, 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 on June 13, 2007 because the beneficiary had already remained in the United States for six years in H-1B status and was ineligible for any further extensions.

Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form I-129 or I-539. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for an extension of stay, this issue will not be reviewed.

On appeal, counsel states that at the time of filing the petition on December 27, 2006, the beneficiary was entitled to an extension of his H-1B classification from January 2, 2007 to April 18, 2007, to complete his six-year limit in H-1B status, as he was initially granted H-1B status on April 18, 2001.

Pursuant to 8 C.F.R. § 214.2(h)(13)(iii)(A):

An H-1B alien in a specialty occupation . . . who has spent six years in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status or be readmitted to the United States under section 101(a)(15)(H) or (L) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

Pursuant to 8 C.F.R. § 214.2(h)(15)(ii)(B):

The alien's total period of stay may not exceed six years. . . .

The beneficiary in the instant case has been the beneficiary of approved H-1B petitions, valid from April 18, 2001 to January 2, 2007. The instant petition was filed on December 27, 2006, with the dates of intended employment from January 2, 2007 to April 18, 2007. As the evidence of record indicates that the beneficiary was initially granted H-1B status on April 18, 2001, his six-year maximum limitation expired on April 18, 2007. For this reason, the petition may be approved until April 18, 2007.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved until April 18, 2007.