



U.S. Citizenship
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FILE: EAC 04 081 50025 Office: VERMONT SERVICE CENTER

Date: AUG 22 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

In January 2004 the petitioner filed the petition in this case in order to continue employing the beneficiary as an H-2B live-in child monitor for the period January 28, 2004 to January 27, 2005. As indicated by the following excerpt from his decision, the director denied the petition on the sole ground that the beneficiary had exceeded the statutory limit upon the time that a beneficiary may remain in H-2B status:

The evidence of record appears to meet the requirement of a one[-]time occurrence for child care until the younger child is old enough to attend a child care facility. The beneficiary's eligibility to qualify for H2B classification is at issue. An H2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act . . . may not seek extension, change of status, or be readmitted to the United States under section 101(a)(15)(H) and[/]or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior six months. The beneficiary was first approved for H-2B status April 28, 2000. Two subsequent petitions were approved; one [EAC 03 088 51992] was denied and is in the appeal process. The beneficiary's initial arrival was in B2 status [on] August 29, 1999. There is no evidence in the record of the alien ever having left the United States. Her three-year limit in H2B status was reached [on] April 27, 2003. She is not eligible for H status until she has been physically present outside the United States for at least six months prior to filing.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

Counsel does not dispute the director's finding that the beneficiary has exceeded three years in H-2B status and has not left the United States since the inception of that status. Counsel also does not dispute the fact that the director's decision complies with the pertinent Citizenship and Immigration Services regulation, namely the extension of stay provision at 8 C.F.R. § 214.2(h)(15), which includes the directive: "When the total period of stay in an H classification has been reached, no further extensions may be granted."

In his addendum to Form I-290B, counsel asserts that the beneficiary is entitled to remain in the United States until a final decision is reached upon a mandamus action that the petitioner had filed in the U.S. District Court for the District of Columbia regarding the aforementioned earlier petition, EAC 03 088 51992, whose denial had been appealed to the AAO. Counsel cites no authority for this proposition. The brief submitted on appeal argues an issue that is not in dispute, namely, whether the proffered employment qualifies as a temporary position within the meaning of the relevant H-2B regulations. As evident in the above excerpt from his decision, the director made a favorable finding with regard to this aspect of the petition. As also evident in that excerpt, the director based his denial solely on his determination that the beneficiary was not eligible for an extension of her H-2B classification.

Counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor counsel presents additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding 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.