U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: SRC 04 159 51745 Office: TEXAS SERVICE CENTER Date: NOV 03 2006

IN RE: Petitioner:
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:

[redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a medical clinic. It seeks to employ the beneficiary as a physician-allergist and extend for one year her stay in the United States 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, 8 U.S.C. § 1101(a)(15)(i)(b).

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 she was not in valid H-1B status, but rather in H-4 status, at the time the instant petition was filed.

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] may not exceed 6 years." However, the amended American Competitiveness in the Twenty-First Century Act ("AC21") removes the six-year limitation on the authorized period of stay in H-1B status for certain aliens whose labor certification applications or employment-based immigrant petitions remain undecided due to lengthy adjudication delays and broadens the class of H-1B nonimmigrants who may avail themselves of this provision.

In her decision the director found that the beneficiary had completed six years of H-1B employment in the United States and had changed her status to H-4. The instant petition seeks to change the beneficiary's classification back to H-1B and to extend her stay for one year under the provisions of AC21. The director determined that AC21 required the beneficiary to be in valid H-1B status at the time the petition was filed and did not allow for an extension of stay based on a change of status from H-4 to H-1B. As the beneficiary was not in valid H-1B status at the time of filing, the director found that she was ineligible for the requested one-year extension of stay in H-1B status. The petitioner filed a timely appeal.

Citizenship and Immigration Services (CIS) records indicate that the beneficiary, via a separate proceeding, applied for adjustment of status (Form I-485, receipt number SRC 05 117 52641) on March 18, 2005, and became a lawful permanent resident of the United States on November 22, 2005. Since the beneficiary is already a lawful permanent resident, the instant petition for H-1B nonimmigrant worker status is moot.

ORDER: The appeal is dismissed, based on the beneficiary's lawful permanent resident status.