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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: EAC 04 087 51533 Office: VERMONT SERVICE CENTER Date: SEP 13 2006

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be summarily dismissed.

The petitioner is a retail chain pharmacy. It seeks to extend the employment of the beneficiary as a pharmacist. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On November 22, 2004, the director denied the petition. He determined that the record did not establish that the beneficiary is eligible for an extension of stay beyond the six-year maximum authorized period of admission under the provisions of sections 104(c) or 106 of the American Competitiveness in the Twenty-first Century Act.

On December 28, 2004, the Vermont Service Center received a Form I-290B, Notice of Appeal, indicating that a separate brief and/or additional evidence would be submitted. The record contains a December 24, 2004 letter from the petitioner indicating that the director's decision was based on the director's conclusion that the beneficiary had exceeded the six-year stay in H-1B status. The petitioner also submits a copy of a receipt notice for a Form I-140, Immigrant Petition for Alien Worker, filed December 15, 2004 and a copy of a receipt notice for a Form I-485, Application to Adjust to Permanent Resident Status, also filed December 15, 2004. Counsel requests that the AAO consider these additional facts to determine whether the beneficiary is entitled to an extension of his H-1B authorized stay. The AAO observes the record also contains a labor condition application certified January 12, 2004 for the H-1B extension and a labor certification with a filing date of June 7, 2004 in support of the Form I-140 petition.

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).

The petitioner fails to specify how the director's decision included an erroneous conclusion of law or statement of fact when denying the petition. As the petitioner does not present additional evidence or argument on appeal sufficient 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).

Of note, the petitioner should review section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4) which provides that "the period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years" and the American Competitiveness in the Twenty-First Century Act (AC-21) (as amended by the Twenty-First Century DOJ Appropriations Authorization Act (DOJ-21)). AC-21 removed the six-year limitation on the authorized period of stay in H-1B visa status for aliens whose labor certifications or immigrant petitions remain pending due to lengthy adjudication delays, and DOJ-21 broadened the class of H-1B nonimmigrants able to avail themselves of this provision.

As amended by section 11030(A)(a) of DOJ-21, section 106(a) of AC-21 states the following:

> (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 DOJ-21 amended section 106(a) of AC-21 to state the following:

> (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.

Two recent Citizenship and Immigration Services (CIS) memoranda clarify the implementation of the above. The memoranda provide, in part, that an alien who is otherwise eligible for an H-1B extension does not need to first file a form I-129 requesting an extension of time to allow the beneficiary to complete the six years, and then file an additional Form I-129 requesting an extension of time beyond the six years. Memorandum from William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, Department of Homeland Security, *Interim Guidance for Processing Form I-140 Employment-Based Immigrant Petitions and Form I-485 and H-1B Petitions Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC 21)(Public Law 106-313)* HQPRD70/6.2.8-P (May 12, 2005); Memorandum from William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, Department of Homeland Security, *Interim Guidance Regarding the Impact of the Department of Labor's (DOL) PERM Rule on Determining Labor Certification Validity, Priority Dates for Employment-Based Form I-140 Petitions, Duplicate Labor Certification Requests and Requests for Extension of H-1B Status Beyond the 6th Year: Adjudicator's Field Manual Update AD05-15.* HQPRD70/6.2.8 (September 23, 2005). The second memorandum, at page 5, states, in part, the following:

> Once [the requirements of Section 106(a) of AC-21] have been met, the alien may be granted an extension beyond the 6-year maximum on or prior to the date the alien reaches the 6-year maximum. Such extensions may only be granted in one-year increments, but may be requested on a single (combined) extension request for any remaining time left in the initial 6-year period. Requiring the filing of two extension petitions merely increases petitioner and CIS workloads, and has no basis in statute.

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 summarily dismissed. The petition is denied