

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Avenue, NW, Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

81



FILE: WAC 05 224 53212 Office: CALIFORNIA SERVICE CENTER Date: JUN 27 2008

IN RE: Petitioner: [Redacted]  
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:



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 a medical group that seeks to employ the beneficiary as an anesthesiologist. The petition is one for a change of employer, and seeks H-1B approval for the beneficiary from July 1, 2005 until July 1, 2008. 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 the beneficiary had remained in the United States in H-1B status for over six years and was not entitled to an extension of stay.

On appeal, counsel submits additional information and states that the petition should be granted because the beneficiary has not “had 6 years continuous use of an H-1 visa.”

The record reflects that the following Form I-129 petitions were approved on behalf of the beneficiary:

- EAC 98 156 51272 - Valid from October 1, 1998 – October 31, 1999 (one year and one month);
- EAC 00 093 50194 - Valid from July 1, 2000 – June 30, 2003 ( three years)
- EAC 03 102 51969 - Valid from July 1, 2003 – June 30, 2004 (one year)
- EAC 04 169 50350 - Valid from July 1, 1004 – June 30, 2005 (one year)

The record also contains an I-94 Departure record indicating that the beneficiary entered the United States on June 23, 2000.

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.” The record indicates that the beneficiary was in approved H-1B status during the dates set forth above, a period of more than six years. An H-1B principal who has spent six years in H status in the United States may not “seek extension, change status, or be readmitted to the United States . . . [under an H or L classification] unless the alien has resided and has been physically present outside the United States . . . for the immediate prior year.” 8 C.F.R. 214.2(h)(13)(iii)(A). The beneficiary did depart the United States at the end of his approved period of stay ending October 31, 1999. He returned to the United States, however, on June 23, 2000, and was not outside the country for a period of one year before resuming H-1B status. The petitioner is not, therefore, entitled to approval of the present petition seeking an additional three years in H-1B status, and the petition must be denied.

Beyond the decision of the director, the beneficiary was not in status when the Form I-129 petition was accepted for filing. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, with certain exceptions. In this case, the beneficiary had last been awarded H-1B status

from July 1, 2004 until June 30, 2005. The present Form I-129 petition was accepted for filing on August 11, 2005, after the beneficiary's H-1B status had lapsed. Thus, the beneficiary had reached the maximum allowable period of time in H-1B status before the instant petition/application for extension of stay was filed. Further, the previous petition had expired and the extension petition must be denied. 8 C.F.R. § 214.2(h)(14). For this additional reason, the petition must 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.

