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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: SRC 03 124 52876 Office: TEXAS SERVICE CENTER Date: JAN 3 1 2005

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:

[redacted]

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 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 non-profit educational foundation that seeks to extend its authorization to employ the beneficiary as its executive director. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 already remained in the United States in H-1B status for six years, the statutory and regulatory limit on the classification. On appeal, counsel states, in part, that the beneficiary's time outside the United States, totaling approximately 441 days, were periods of meaningful interruptions. Counsel submits additional documentation, including the beneficiary's airline receipts, itineraries, a police report, and a court summons, as supporting documentation.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Pursuant to 8 C.F.R. § 214.2(h)(13)(i)(B):

> When an alien in an H classification has spent the maximum allowable period of stay in the United States, a new petition under sections 101(a)(15)(H) or (L) of the Act may not be approved unless that alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the time limit imposed on the particular H classification. Brief trips to the United States for business or pleasure during the required time abroad are not interruptive, but do not count towards fulfillment of the required time abroad. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States during the period that the alien was required to spend time abroad.

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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The regulation states, "An H-1B alien . . . 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." 8 C.F.R. § 214.2(h)(13)(iii). Section 214(g)(4) of the Act states, "In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years." Section 101(a)(13)(A) of the Act states, "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien in the United States after inspection and authorization by an immigration officer." The plain language of the statute and the regulations indicates that the six-year period accrues after admission into the United States. This premise is further supported and explained by the court in *Nair v. Coultice*, 162 F. Supp. 2d 1209 (S.D. Cal. 2001).

The beneficiary in this proceeding was approved for H-1B classification from June 4, 1997 through May 1, 2003, a period of six years. The beneficiary first entered the United States in H-1B status on December 5, 1997. At the time the instant petition was filed on March 31, 2003, counsel submitted documentation to establish that, since the beneficiary's December 5, 1997 admission date, she had been outside the United States for approximately 338 days. Counsel stated that the beneficiary's H-1B status should be extended by the same number of days that she was outside the country. In her decision, the director stated, in part: "It appears the beneficiary maintained her H-1B classification during her days spent outside the United States."

The AAO notes that the petitioner is in the best position to organize and submit the proof of the beneficiary's departures from and reentry into the United States. The submission of copies of passport stamps or Form I-94 arrival-departure records, without an accompanying statement or chart of dates spent out of the country by the beneficiary, would be subject to error in interpretation and would not be considered probative and may be rejected. Similarly, a statement of dates spent outside of the country must be accompanied by consistent, clear and corroborating proof of departures from and reentries into the United States. The petitioner must submit supporting documentary evidence for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In this case, although counsel and the petitioner stated that the beneficiary was outside the United States for personal matters, no supporting evidence was submitted to corroborate their statements. As such, the record demonstrates that the beneficiary has completed her six-year limit in H or L status. For this reason, the petition may not be approved.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is eligible for an extension of her H-1B status. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.