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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: SRC 03 211 53606 Office: TEXAS SERVICE CENTER Date: OCT 0 4 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 an international banking company that seeks to extend the employment of the beneficiary as a sales officer. 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 already remained in the United States in H-1B status for six years, the regulatory limit on the classification. On appeal, counsel submits a brief.

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 (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The beneficiary in this proceeding was in H-1B status from August 1, 1997 through July 31, 2003, a period of six years, which is the maximum allowed by the regulations. At the time the instant petition was filed, counsel submitted a copy of the beneficiary's passport establishing that the beneficiary had been outside the United States during the six years in H-1B status. Counsel stated that the beneficiary's H-1B status should be extended by the same number of days that she was outside the country. The director determined that time spent outside the country during the validity period of a petition must be counted towards the alien's maximum stay in the United States, and that the time cannot be reclaimed for purposes of extending the six-year limit. The AAO disagrees with the director.

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 explicated by a federal district court in *Nair v. Coultice,* 162 F.Supp.2d 1209 (S.D. Cal. 2001).

The time a beneficiary spends in the United States is dependent on the period(s) of lawful admission. The beneficiary was admitted to the United States each time she returned from outside the country. The total period for which she could have been in lawful H-1B status in the United States was six years. When she was outside the country, the beneficiary was not in any status for U.S. immigration purposes. By virtue of departing the country, the beneficiary broke the period that she was in H-1B status, and renewed that status with each readmission to the United States. The director should have determined that the petitioner was allowed an extension of the beneficiary's H-1B status for the total number of days that it proved the beneficiary was out of the country.

The petition still may not be approved, however. The AAO notes that the petitioner is in the best position to organize and submit proof of the beneficiary's departures from and reentry into the United States. Copies of passport stamps or Form I-94 arrival-departure records, without an accompanying statement or chart of dates the beneficiary spent outside the country, could be subject to error in interpretation, might 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 to meet his burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

There is no statement or chart of dates regarding the time the beneficiary spent outside the country. Her passport stamps indicate multiple admissions to the United States, but there is no evidence regarding her departures or the exact time spent outside the country. The petitioner must establish the exact number of days the beneficiary spent outside the United States in order for the beneficiary to be entitled to an additional period of time in H-1B classification.

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.