

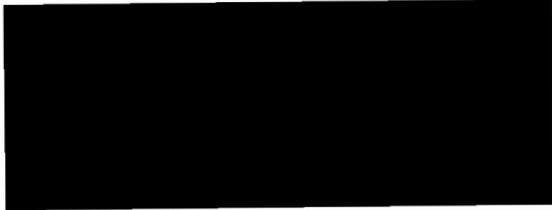


U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 140 52201 Office: CALIFORNIA SERVICE CENTER Date: **APR 12 2006**

IN RE: Petitioner:
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:



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 petitioner filed a Form I-129 petition for continuation of previously approved employment without change, and requesting an extension of stay, on April 29, 2004. The director entered a decision on June 18, 2004 approving the H1B visa petition and denying the petitioner's request for extension of stay because the beneficiary's status lapsed prior to the filing of the petition. The petitioner filed an appeal of that determination stating that the petition was filed late due to ineffective assistance of previous counsel. The appeal will be rejected as there is no decision of the director denying a petition that is within the jurisdiction of the Administrative Appeals Office (AAO).

The petitioner is seeking an extension of status on behalf of the beneficiary under 8 C.F.R. § 214.1(c)(1). The director's denial of the petitioner's request for an extension of status is not subject to appeal. 8 C.F.R. § 214.1(c)(5). Thus, the AAO has no jurisdiction over the subject matter of this appeal.

It should be further noted that the petitioner alleges ineffective assistance of previous counsel as grounds for appealing the director's decision. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozado*, 19 I&N Dec. 637 (BIA 1988), *affd*, 857 F.2d 10 (1st Cir. 1988).

ORDER: The appeal is rejected.