U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

D2

[redacted]

Date: DEC 15 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a provider of information technology services. It seeks to employ the beneficiary as a sales engineer. The petitioner, therefore, 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, finding that the petitioner sought to extend the validity of the previously approved H-1B petition and the beneficiary's authorized period of stay beyond the maximum six-year period of stay allowed under section 106(a) of the "American Competitiveness in the Twenty-First Century Act" (AC21). The director noted that the petitioner's Petition for Alien Worker (Form I-140) filed on behalf of the beneficiary was denied on May 23, 2008. On appeal, counsel states that the Form I-140 denial was never received.

The record of proceeding before the AAO contains: (1) Form I-129 with 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 petitioner is seeking the beneficiary's services as a sales engineer. On the Form I-129, the petitioner indicates that it seeks to continue the beneficiary's previously approved employment without change, and to extend his stay in the United States beyond its expiration on March 8, 2009. The beneficiary has been in the United States in H-1B status since April 12, 2002, and seeks to extend his status beyond the six-year statutory limit claiming that the Form I-140 filed on his behalf is pending.

In general, 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." [Emphasis added.] The regulation at 8 C.F.R. § 214.2 (h)(13)(iii)(A) states, in pertinent part, that:

> 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 . . . . [emphasis added].

AC21 removes the six-year limitation on the authorized period of stay in H-1B visa status for certain aliens whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays, and broadens the class of H-1B nonimmigrants who may avail themselves of this provision.

As amended by § 11030A(a) of the "Twenty-First Century Department of Justice Appropriations Authorization Act" (DOJ21), § 106(a) of AC21 reads:

> (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 11030A(b) of DOJ21 amended § 106(b) of AC21 to read:

> (b) EXTENSION OF H-1B WORKER STATUS--The [Secretary of Homeland Security] 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.

Pub. L. No. 107-273, §11030A, 116 Stat. 1836, 1836-37 (2002).

USCIS records confirm that the petitioner's Form I-140 filed on the beneficiary's behalf was denied on May 23, 2008. The petitioner, through counsel, claims that it did not receive the denial. In support, counsel submits a copy of the USCIS Online Case Status report indicating that the petitioner's response to the director's request for evidence had been received. The USCIS Online Case Status is not the official USCIS record, nor does it demonstrate that the Form I-140 denial was not issued and properly served. As noted above, USCIS official records indicate that the Form I-140 was denied on May 23, 2008. An uncorroborated, self-serving denial of receipt is weak evidence, even if sworn. *Joshi v. Ashcroft*, 389 F.3d 732, 735-736 (7th Cir. 2004). As such, absent sufficient, objective evidence to support the petitioner's claim that it did not receive a copy of the director's denial, the AAO must conclude that the denial was

received by the petitioner as it was properly served in accordance with 8 C.F.R. § 103.5a. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner has failed to demonstrate that the beneficiary is exempt from the maximum six-year period of stay permitted for H-1B nonimmigrants under section 214(g)(4) of the Act and its appeal will be dismissed for this reason.

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. The appeal will therefore be dismissed. The petition will remain denied.

ORDER: The appeal is dismissed. The petition remains denied.