

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



DI

FILE: EAC 04 007 54275 Office: VERMONT SERVICE CENTER Date: **AUG 16 2005**

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, 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 investment banking and financial services firm that seeks to extend its authorization to employ the beneficiary as an international financial consultant. 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 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 indicates that the beneficiary in this proceeding was afforded H-1 classification on August 5, 1997, and completed his maximum six-year limit on August 5, 2003. On appeal, counsel states that the 202 days the beneficiary spent outside the U.S. cannot be counted in calculating his 6-year limit. The director determined that the petitioner had submitted a list of dates for the beneficiary's time spent outside the United States, but did not include any evidence of the nature of such trips. The director concluded that the petitioner had not demonstrated that the beneficiary is eligible for any further extension.

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. Coultime*, 162 F. Supp. 2d 1209 (S.D. Cal. 2001).

The AAO finds that the time that counts toward the maximum six-year period of authorized stay is time that the beneficiary spends in the United States after lawful admission in H or L status. In this case, the record contains a list of dates of the beneficiary's absences from the United States from 1997 to 2003, with a total of 202 days, and a "Trip Activity Detail" from American Express Travel Related Services Co., detailing the beneficiary's airline ticket itineraries from 1999 to 2002. The record also contains copies of the beneficiary's passport pages, as well as evidence of the beneficiary's property ownership in Spain. The record also contains the following evidence for the beneficiary's absences from the United States in 2003:

- "Travel and Entertainment Expense Report" for the beneficiary for business travel "NYC/Madrid dates 01/17/03 thru 01/26/03";

- Itinerary for the beneficiary reflecting a round-trip ticket from New York City to Madrid, with a departure date of January 17, 2003 and a return date of January 26, 2003;
- Car and Limo Service receipt, dated January 17, 2003, with the beneficiary named as the customer;
- Taxi receipts from Madrid, dated January 18, 2003 and January 23, 2003, respectively;
- Transport receipt from Madrid, dated January 20, 2003;
- Taxi receipt from JFK, dated January 26, 2003;
- Electronic bank receipts, dated January 22, 23, and 24, issued to the beneficiary in Madrid;
- Various receipts from Madrid, dated January 20 – 24, 2003;
- “Travel and Entertainment Expense Report” for the beneficiary for business travel “NYC-Kennedy – Madrid” from April 1 – 14, 2003;
- Boarding Pass/Electronic Ticket issued to the beneficiary for a Delta flight from NYC-Kennedy to Madrid on April 4, 2003;
- Invoice/Itinerary for the beneficiary reflecting a round-trip ticket from NYC/Kennedy to Madrid, with a departure date of April 4, 2003 and a return date of April 13, 2003;
- Car and Limo Service and taxi receipts, dated April 4, 2003 and April 13, 2003, respectively;
- Electronic Ticket issued to the beneficiary on March 26, 2003, for travel from NYC/Kennedy to Madrid, Spain, with a departure date of April 4, 2003 and a return date of April 13, 2003;
- Sales receipts, dated April 10, 2003 and April 12, 2003, issued to the beneficiary in Madrid;
- Various receipts issued to the beneficiary, dated April 6, April 11, and April 12, 2003;
- “Travel and Entertainment Expense Report” for the beneficiary for business travel “NYC-Kennedy – Madrid” from June 1 – 10, 2003;
- Delta Air Lines receipt issued to the beneficiary for a round-trip ticket from Madrid to JFK, with a departure date of May 23, 2003 and a return date of June 1, 2003;
- Invoice/Itinerary for the beneficiary reflecting a round-trip ticket from NYC/Kennedy to Madrid, with a departure date of May 23, 2003 and a return date of June 1, 2003;
- Car and taxi receipts, dated May 23, 2003 and June 1, 2003, respectively; and

- Various receipts issued to the beneficiary in Madrid, dated from May 25 – June 1, 2003.

The record contains insufficient documentary evidence in support of the petitioner's claim. The evidence of the beneficiary's property ownership in Spain has no relevance for the purposes of meeting the burden of proof in these proceedings. The copies of the beneficiary's passport pages have been reviewed; many of the stamps, however, are illegible. Furthermore, the petitioner has submitted no accompanying statement related to the stamped passport pages or chart of the departure and reentry dates. It is additionally noted that the only evidence submitted for the beneficiary's travel outside the United States from 1997 through 2002 are the Trip Activity Detail reports prepared by Citigroup. These reports, however, which list only the beneficiary's departure dates, do not suffice as corroborating proof of the beneficiary's departures and reentries into the United States. The petitioner also submitted computer-generated reports as evidence of the beneficiary's 2003 travel. The reliability of such reports, however, has not been established. It is noted that a Travel & Entertainment Expense Report, which reflects that the beneficiary had traveled from New York to Madrid on April 1, 2003 and returned on April 14, 2003, conflicts with the beneficiary's boarding pass/electronic ticket and invoice/itinerary, which reflect his departure date as April 4, 2003 and his return date April 13, 2003. The record contains no explanation for the inconsistencies discussed above. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In view of the foregoing, the 202-day extension cannot be granted.

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).

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.