

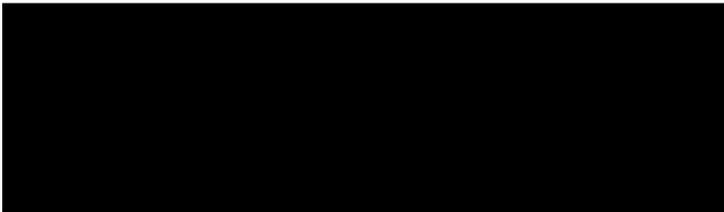
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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. 3000
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U.S. Citizenship
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FILE: EAC 04 267 50629 Office: VERMONT SERVICE CENTER

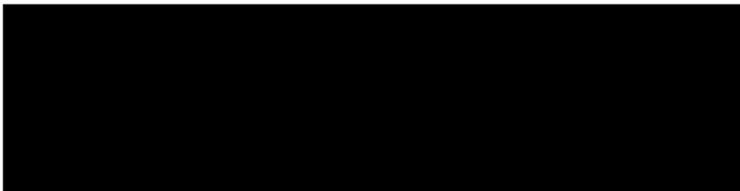
Date: DEC 04 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved for 113 days.

The petitioner is a public radio station that seeks to continue its employment of the beneficiary as a station relations manager. The petitioner endeavors to continue the beneficiary's H-1B classification and extend her stay 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 determined that the beneficiary had been in the United States in H-1B status for six years, the statutory and regulatory limit on the classification. The director determined further that the evidence submitted by the petitioner failed to establish that the beneficiary's absences from the United States during the period of her H-1B status were interruptive of her employment in the United States, or that her time spent out of the U.S. could be added onto the beneficiary's six-year stay.

On appeal, counsel correctly argues that the beneficiary's absences from the United States during the periods covered by an approved H-1B petition should not count against her time in H-1B status.

Section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), provides in pertinent part that "[t]he period of authorized admission [of an H-1B nonimmigrant] may not exceed 6 years." The regulation at 8 C.F.R. § 214.2(h)(13)(iii)(A) clarifies further 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 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.

Section 101(a)(13)(A) of the Act provides that, "[t]he 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 therefore indicates that the H-1B nonimmigrant six-year period accrues after admission into the United States. This premise is supported and explained by the court in *Nair v. Coultice*, 162 F. Supp. 2d 1209 (S.D. Cal. 2001). It is further supported by a policy memorandum issued by the United States Citizenship and Immigration Services (CIS) that adopts *Matter of I-*, USCIS Adopted Decision 06-0001 (AAO, October 18, 2005), available at: <http://uscis.gov/graphics/lawregs/decisions.htm>, as formal policy. See Memorandum from Michael Aytes, Acting Associate Director for Domestic Operations, Citizenship and Immigration Services, Department of Homeland Security, *Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants*. AFM Update AD 05-21 (October 21, 2005).

The time that counts toward the maximum six-year period of authorized stay is thus the time that the beneficiary spends in the United States after lawful admission in H-1B status. In the present matter, the beneficiary would thus, by virtue of departing the country, stop the period that she was in H-1B status, and

she would renew her H-1B status with each readmission to the United States. Accordingly, an extension of the beneficiary's H-1B status would be justified for the total number of days that the petitioner proves the beneficiary was out of the country.

The issue of how much time, if any, should be credited to the beneficiary as time-out-of-country is an evidentiary question to be decided by the evidence of record. The petitioner is in the best position to organize and submit proof of the beneficiary's departures from, and reentry into, the United States, and the petitioner must submit supporting documentary evidence to meet its 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)). 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. Moreover, it is noted that copies of passport stamps or Form I-94 arrival-departure records, without an accompanying statement or chart of dates that the beneficiary spent outside the country may be rejected, as it could be subject to error in interpretation and may not be probative.

The AAO finds that in the present matter, the petitioner has established that the beneficiary should be credited for 113 out-of-country days, and that her time in H-1B status and authorized stay should be extended by that amount of time.

The record reflects that the beneficiary continuously maintained H-1B classification during the period from October 1, 1998 to September 30, 2004. The petitioner has filed the instant request for extension in order to continue the beneficiary's employment in H-1B status for the 120-day period between October 1, 2004 and January 29, 2005.

To substantiate the assertion that the beneficiary was outside of the United States for 120 days, the petitioner submitted the following documents: (1) a one-page chart entitled "Departure/Return Dates for H1-B petition," reflecting the dates on which the beneficiary entered and departed from the United States and other countries between December 10, 1998 and September 26, 2004; (2) several pages from the beneficiary's South African and United Kingdom passports containing U.S., and other country, entry and exit stamps; and (3) airline itineraries and boarding passes reflecting travel by the beneficiary.

The AAO finds that the beneficiary's passport and airline itinerary and boarding pass evidence corroborate the petitioner's assertion that the beneficiary was outside of the United States between: 12/10/98 – 12/30/98 (19 days)¹; 12/3/99 – 12/19/99 (16 days); 2/19/01 – 3/5/01 (14 days)²; 3/28/02 – 4/16/02 (18 days); 9/26/02 – 10/15/02 (18 days); 7/8/03 – 7/22/03 (13 days); and 9/10/04 – 9/16/04 (15 days).

¹ The evidence of record indicates that the beneficiary left South Africa on December 30, 1998. Page 12 of the United Kingdom passport, which the petitioner states reflects an entry into the U.S. on 12/31/98, is not of record.

² The evidence of record indicates that the beneficiary left South Africa on March 5, 2001. Page 12 of the United Kingdom passport, which the petitioner indicates establishes the beneficiary's reentry into the U.S. on March 6, 2001, is not of record.

The AAO found no evidence in the record to corroborate the petitioner's assertion that the beneficiary was outside of the United States between April 28th and April 30, 2000, and between December 23rd and December 28, 2003.

The burden of proof resides solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Based upon a thorough review of the evidence, the AAO finds that the petitioner established that the beneficiary was absent from the United States for 113 days.

ORDER: The appeal is sustained. The petition is approved for 113 days.