



U.S. Citizenship
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Services

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FILE: WAC 07 094 51271 Office: CALIFORNIA SERVICE CENTER Date: **DEC 10 2008**

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 APPLICANT:
[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
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 accounting firm that seeks to employ the beneficiary as a market research analyst. 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 on the basis that the petitioner had filed the extension petition after the validity of the original petition had expired.

The regulation at 8 C.F.R. § 214.2(h)(14) states the following:

Extension of visa petition validity. The petitioner shall file a request for a petition extension on Form I-129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. . . . **A request for a petition extension may be filed only if the validity of the original petition has not expired.** [Emphasis added.]

The regulation at 8 C.F.R. § 103.2(b)(7)(i), which discusses receipt dates, states further:

An application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and . . . shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. . . . Rejected applications and petitions . . . will not retain a filing date.

According to Service records, the petitioner's original petition was valid from March 15, 2004 until January 1, 2007. The petitioner originally submitted a Form I-129 petition to extend the beneficiary's stay in the United States in H-1B status in December 2006. That petition, however, was rejected because the petitioner failed to include the proper fee with the petition's filing. The petitioner resubmitted the petition with the proper fee on February 27, 2007, a date after the original petition's validity had expired.

As the petitioner failed to timely file a petition to extend the beneficiary's stay in the United States in H-1B status, the petition shall be denied.

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