

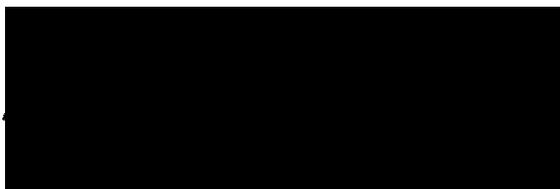
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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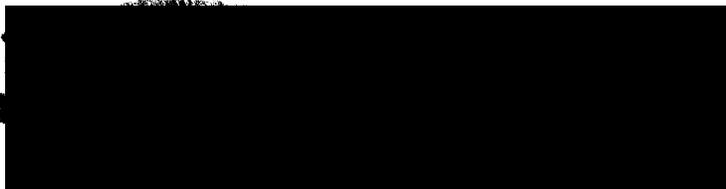
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FILE: LIN 04 047 50736 Office: NEBRASKA SERVICE CENTER Date: JUL 25 2005

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 shall be summarily dismissed.

The petitioner is an Internet technology staffing services business that seeks to extend its authorization to employ the beneficiary as a programmer analyst. 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 petitioner had not demonstrated that 365 days or more had passed since the filing of an application for labor certification and, therefore, the beneficiary does not qualify for exemption of the six-year maximum limit of stay pursuant to the 21st Century Department of Justice Appropriations Act (21st Century DOJ Appropriations Act). The director found further that the beneficiary has already remained in the United States in H or L status for more than six years.

Counsel submitted a timely Form I-290B on April 7, 2004, and amends the information that was provided at the time of the filing of the petition. In sum, counsel states that the beneficiary entered the United States for the first time as an H-1B nonimmigrant on February 26, 1998, as opposed to February 27, 1997, the date that was mistakenly noted on the petition. Counsel also provides a copy of a letter, dated March 31, 2004, from the Agency for Workforce Innovation in Tallahassee, Florida, which amends the priority date of the alien labor certification from February 26, 2003 to February 24, 2003.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

On the Form I-290B, counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. The amendment of the priority date of the alien labor certification by two days does not qualify the beneficiary for benefits under the 21st Century DOJ Appropriations Act. Furthermore, as far as amending information originally provided on the I-129 petition, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As neither the petitioner nor counsel presents additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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.

ORDER: The appeal is dismissed.