

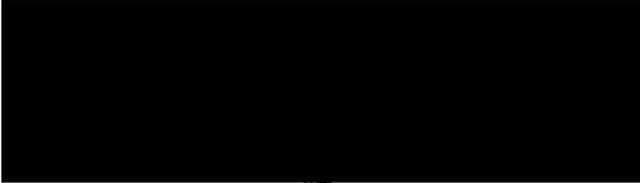
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: SRC 04 117 51143 Office: TEXAS SERVICE CENTER Date: DEC 01 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:

SELF-REPRESENTED

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.

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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 sustained. The petition will be approved.

The petitioner is a medical school that seeks to extend the employment of the beneficiary as a resident physician. The petitioner 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 because the beneficiary had already remained in the United States in H-1B status for six years, the regulatory limit on the classification. On appeal, the petitioner submits a statement.

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 of proceeding before the AAO contains: (1) Form I-129 and 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 (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The beneficiary in this proceeding was in H-4 and H-1B status from July 12, 1998 through July 11, 2004, a period of six years, which is the maximum allowed by the regulations. In response to the director's request for evidence, the petitioner stated that the beneficiary had been outside the United States for 60 days during the six years and that the beneficiary's H-1B status should be extended by the same number of days that she was outside the country. The director determined that the petitioner failed to establish that the beneficiary was eligible to recapture the time spent outside the country. The AAO disagrees with the director.

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 explicated by a federal district court in *Nair v. Coultrice*, 162 F.Supp.2d 1209 (S.D. Cal. 2001).

The time a beneficiary spends in the United States is dependent on the period(s) of lawful admission. The beneficiary was admitted to the United States each time she returned from outside the country. The total period for which she could have been in lawful H-4 or H-1B status in the United States was six years. When she was outside the country, the beneficiary was not in any status for U.S. immigration purposes. By virtue of departing the country, the beneficiary broke the period that she was in H-4 or H-1B status, and renewed that status with each readmission to the United States. The director should have determined that the petitioner was allowed an extension of the beneficiary's H-1B status for the total number of days that it proved the beneficiary was out of the country. The AAO notes that the stamps on the beneficiary's passport indicate that the beneficiary was outside the country for 79 days.

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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.