

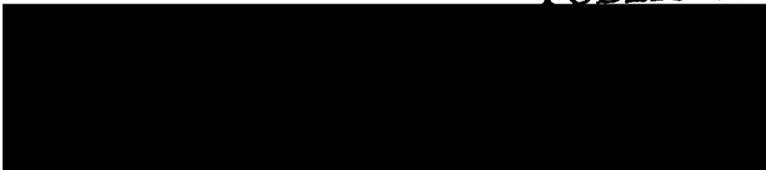
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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APR 03 2007

FILE: EAC 05 141 50417 Office: VERMONT SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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, a firm that provides restoration and conservation services, seeks to continue employing the beneficiary as an art restoration specialist. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 extension petition on the basis that the beneficiary did not qualify for stay in the United States in H status beyond six years under the American Competitiveness in the Twenty-First Century Act (AC-21) as amended by the Twenty-First Century DOJ Appropriations Authorization Act (DOJ-21).

The only relevant evidence submitted on appeal is a copy of previously submitted Department of Labor correspondence that establishes that the petitioner submitted an Application for Alien Employment Certification on July 2, 2004. As discussed below, this evidence does not overcome the basis of the director's decision, which accords with the pertinent law and regulations. Accordingly, the appeal will be dismissed, and the petition will be denied.

As a general rule, section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), provides that "the period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years." However, AC-21 removed the six-year limitation on the authorized period of stay in H-1B visa status for aliens whose labor certifications or immigrant petitions remain pending due to lengthy adjudication delays; and DOJ-21 broadened the class of H-1B nonimmigrants able to avail themselves of this provision.

As amended by section 11030(A)(a) of DOJ-21, section 106(a) of AC-21 states the following:

(a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

- (1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).
- (2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.

Section 11030(A)(b) of DOJ-21 amended section 106(a) of AC-21 to state the following:

(b) EXTENSION OF H-1B WORKER STATUS--The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;

(2) to deny the petition described in subsection (a)(2); or

(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.

The petitioner does not dispute the director's finding that the beneficiary has been in continuous H-1B status, as an employee of the petitioner, since April 20, 1999. The record reveals the following additional facts material to the appeal. The most recently approved extension petition extended the beneficiary's H-1B classification until April 19, 2005. The present petition was filed on April 18, 2005, while the beneficiary was still in H-1B status. The present petition seeks to extend the beneficiary's H-1B classification for approximately three years (until April 13, 2008).¹ The petitioner filed an Application for Alien Employment Certification on July 2, 2004, which is 290 days prior to the filing of present petition, and 291 days prior to the expiration of the period approved for H-1B.

The record of proceeding establishes that, in accordance with section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), absent exemption under AC-21, the beneficiary's entitlement to stay in the United States in H-1B status could not exceed six-years. As 365 days had not elapsed between the filing of the application for labor certification and the filing of the petition, the director correctly determined that the beneficiary did not qualify for such an exemption. Therefore, the AAO will not disturb the director's denial of the petition.

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. The petition is denied.

¹ In contrast to the three-year extension period requested by the petitioner, AC-21 as amended by DOJ-21 provides for exemptions to the six-year year limit on stay in only one-year increments.