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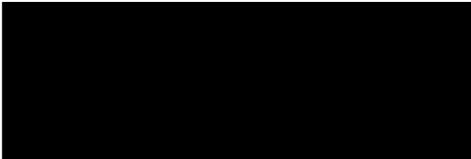
FILE: EAC 06 160 53196 Office: VERMONT SERVICE CENTER Date: DEC 04 2007

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 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 Italian restaurant that seeks to employ the beneficiary as a director of operations. 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 determined that the beneficiary is not eligible for a change of status or for an extension of stay because the requested start date of October 1, 2006 is beyond the beneficiary's maximum time limitation.

Pursuant to 8 C.F.R. 248.3(g), there is no provision for an appeal from the denial of a change of status. This issue therefore will not be discussed further.

On appeal, counsel states that the beneficiary was granted L-1 status in 2000, and now requests a change of status to H-1B. Counsel also states that the petitioner had no choice but to request the start date of October 1, 2006.

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.

Pursuant to 8 C.F.R. § 214.2(h)(15)(ii)(B):

The alien's total period of stay may not exceed six years. . . .

The evidence of record indicates that the beneficiary in this proceeding entered the United States in L-1 status on September 20, 2000, and completed his maximum six-year limit on September 20, 2006. As no evidence of any exception has been submitted, the record demonstrates that the beneficiary has completed his six-year limit in H or L status. For this reason, the petition may not be approved.

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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.