

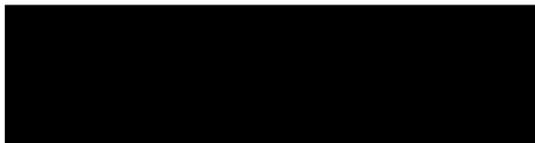
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U.S. Citizenship
and Immigration
Services

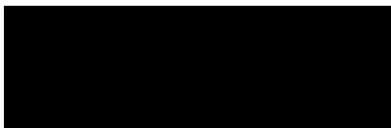
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FILE: EAC 06 025 52470 Office: VERMONT SERVICE CENTER Date: **SEP 07 2007**

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:

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 Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be summarily dismissed.

The petitioner provides software-consulting services. It seeks to employ the beneficiary as a programmer analyst. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On July 18, 2006, the director denied the petition determining: that the beneficiary had been in H-1B status since 1999; had already recaptured ten months of time spent outside the United States in that time period; had not resided outside the United States for the requisite one year before applying for new H-1B employment; and that the petitioner had not submitted evidence that the beneficiary is eligible for an extension based on the "American Competitiveness in the Twenty-First Century Act," (AC-21) as amended by the "Twenty-First Century Department of Justice Appropriations Authorization Act" (DOJ Authorization Act). The director notified the petitioner it could appeal the decision within 30 days (33 days if the notice was received by mail).

On August 18, 2006, the Vermont Service Center received a Form I-290B, Notice of Appeal, indicating that a separate brief and/or evidence was being submitted with the Form I-290B. In a statement appended to the Form I-290B, the petitioner stated that it accepted the Citizenship and Immigration Services (CIS) decision but requested reconsideration of the matter on humanitarian grounds.

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).

The AAO, like the Board of Immigration Appeals, is without authority to apply humanitarian principles so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003).

As the petitioner fails to specify how the director's decision included an erroneous conclusion of law or statement of fact when denying the petition, but rather accepts the decision as correct, there is no argument or evidence on appeal sufficient to overcome the decision of the director. Accordingly, 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 summarily dismissed. The petition is denied