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U.S. Citizenship
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FILE: EAC 07 159 53189 Office: VERMONT SERVICE CENTER Date: OCT 02 2008

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.

for
Robert P. Wieman
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a wi-fi networking and software development corporation. In order to continue to employ the beneficiary as a programmer analyst, the petitioner filed this petition to continue the beneficiary's status and extend her stay as an H-1B 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).

In general, section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4) provides that: "[T]he period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years." However, the American Competitiveness in the Twenty-First Century Act (AC21), as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act (21st Century DOJ Appropriations Act), removes the six-year limitation on the authorized period of stay in H-1B visa status for certain aliens whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays, and broadens the class of H-1B nonimmigrants who may avail themselves of this provision.

Stating that "[t]he evidence of record does not establish that the beneficiary is eligible for an extension of stay beyond six years under the provisions of sections 104(c) 106 of AC21 as amended by the 21st Century DOJ Appropriations Act," the director denied the petition on the basis that the beneficiary was not entitled to an additional year in H-1B status under the provisions of AC21, as amended by the 21st Century DOJ Appropriations Act.

The petitioner submitted a timely Form I-290B on March 19, 2008 and indicated that no brief and/or additional evidence would be submitted. The record of proceeding contains no brief or any additional evidence on appeal.

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. 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.