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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: WAC 09 049 50957 Office: CALIFORNIA SERVICE CENTER

Date: **AUG 03 2010**

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
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 summarily dismissed.

The petitioner is a corporation doing business in the hotel and hospitality industry. To continue to employ her as its Director of Revenue Management, the petitioner filed this H-1B petition to continue the beneficiary's classification and extend her stay for one year as a nonimmigrant worker in a specialty occupation under 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). This petition was filed under the auspices of section 106(a) of the "American Competitiveness in the Twenty-First Century Act" (AC21) as amended by the "Twenty-First Century Department of Justice Appropriations Authorization Act" (DOJ21), which is hereinafter referred to as "AC21 as amended."

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, AC21 as amended 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.

As amended by section 11030A(a) of DOJ21, section 106(a) of AC21 reads:

(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 11030A(b) of DOJ21 amended § 106(b) of AC21 to read:

(b) EXTENSION OF H-1B WORKER STATUS--The [Secretary of Homeland Security] 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.

Pub. L. No. 107-273, §11030A, 116 Stat. 1836, 1836-37 (2002) (emphasis added to identify sections amended by DOJ21).

In his December 7, 2008 letter accompanying the Form I-129, the petitioner's counsel asserted that the beneficiary was entitled to a one-year extension under AC21 as amended because an application for labor certification, which counsel identified by a Department of Labor (DOL) case number, was pending since March 8, 2006 (which the AAO calculates as 1009 days before the petition's filing on December 11, 2008).¹

The director clearly articulated that she denied the petition because the petitioner failed to provide documentary evidence from DOL of any action pending before that agency that would entitle the beneficiary to a one-year extension under section 106(a) of AC21 as amended.²

On March 13, 2009, the petitioner's counsel submitted a Form I-290B (Notice of Appeal or Motion), without a brief or evidence. The only comment about the basis of the appeal is the following generalized assertion at Part 3 of the Form I-290B:

Section 106(a)(1) of The American Competitiveness in the Twenty[-]First Century Act authorizes an additional extension of stay in H-1B classification in the present case. Appellant has complied with the documentary requirements for such an extension.

The petitioner's counsel checked box B at section 2 of the Form I-290B, indicating that the petitioner would send a brief and/or evidence within 30 days. Likewise, counsel's cover letter accompanying the Form I-290B states: "We shall be filing a brief and supporting materials in thirty days." However, the AAO has received neither a brief nor any type of documentation supplementing the Form I-290B. Accordingly, the record of proceeding is deemed complete as currently constituted.

¹ Interestingly, the AAO's search of the DOL Employment & Training Administration's PERM Disclosure Data Table for 2006 (accessible on the Internet through the Permanent Workers link in the Disclosure Data section at <http://www.foreignlaborcert.doleta.gov/>) reveals that the labor certification application cited by counsel was both received and denied on March 8, 2006 – more than two years before this extension petition was filed.

² As noted by the director and reflected in the record of proceeding, such documentation was not submitted, although it had been specifically sought in the service center's request for additional evidence (RFE).

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 petitioner's 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 summarily dismissed.