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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]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 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.

To continue to employ the beneficiary as a high school teacher of Art and Japanese, the petitioner, a public school district with 24 schools, 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).

The director denied the one-year extension because the petitioner failed to provide documentary evidence from DOL of any action pending that would entitle the beneficiary to a one-year extension under section 106(a) of AC21.

The record reflects that the Form I-129 was filed on February 4, 2009 and that the only document upon which the petitioner filed this petition was a permanent labor certification that the Department of Labor certified on May 11, 2006. The director noted:

[T]he petitioner, stated through its counsel, that due to an oversight by the attorney, the I-140 [which would have been supported by the permanent labor certification] was not filed prior to the expiration of the permanent labor certification. The petitioner attempted to file subsequent [F]orm I-140s, but they were rejected because the permanent labor certification had expired.

As explanation why the permanent labor certification was no longer effective to provide a basis for the extension, or, for that matter, an Form I-140 petition, the director correctly cited the decisive regulation, as follows:

[Department of Labor (DOL) regulations, effective July 16, 2007, now limit the validity period of an approved permanent labor certification to 180 days.

20 C.F.R. § 656.30 states the following about the validity of and invalidation of labor certifications:

*(b) Expiration of labor certifications.* For certifications resulting from applications filed under this part and 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

(1) An approved permanent labor certification granted on or after July 16, 2007 expires if not filed in support of a Form I-140 petition with the Department of

Homeland Security within 180 calendar days of the date the Department of [L]abor granted the certification.

- (2) An approved permanent labor certification granted before July 16, 2007 expires if not filed in support of a Form I-140 petition with the Department of Homeland Security within 180 calendar days of July 16, 2007. [That time period calculates to January 12, 2008.<sup>1</sup>]

On April 27, 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:

The decision of the director is being appealed because it is based on an unnecessarily strict reading of the memorandum issued by the Service regarding AC21 and extensions of non-immigrant visa status. The Service has ample authority in the statute and regulations to extend the temporary visa status in this case. Finally, the Service should have used the discretionary authority it has to approve an extension. A brief detailing the reasons and arguments will be filed within 30 days.

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 that a brief would follow within 30 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.

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.

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<sup>1</sup> The bracketed phrase appears in the director's decision.