



U.S. Citizenship  
and Immigration  
Services

(b)(6)



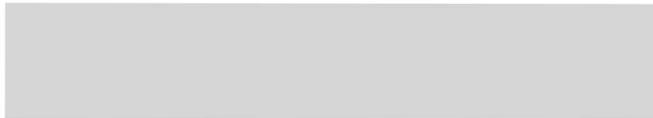
APR 28 2015

DATE:

PETITION RECEIPT #: 

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Peter Rosenberg  
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner described itself as a health care staffing registry. In order to employ the beneficiary in what it designates as a director of nursing position, the petitioner seeks to classify her 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 denied the petition, concluding that: (1) the beneficiary had not satisfied the requirements for an extension of stay beyond the maximum six-year period of stay allotted under the American Competitiveness in the Twenty-First Century Act, (AC21) as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act (DOJ Authorization Act); and (2) the petitioner did not properly complete and file the Form I-129 petition. We reviewed the record in its entirety before issuing our decision.

#### I. PRELIMINARY FINDINGS

As a preliminary matter, we have reviewed the director's determination with regard to the beneficiary's eligibility for an extension of stay under AC21 and find that the director's conclusion was misplaced. Consequently, the director's finding with regard to this issue is hereby withdrawn.<sup>1</sup>

Beyond the decision of the director, however, we note a critical issue pertaining to the petitioner's eligibility to extend its employment of the beneficiary in H-1B status. Specifically, the petition must be denied as it was filed after the expiration of the petition it sought to extend. *See* 8 C.F.R. § 214.2(h)(14). In this matter, the petition that the petitioner sought to extend (EAC 10 061 52039) expired on December 31, 2012. The instant petition was filed on January 14, 2013, two weeks after the original petition's expiration.

The regulations mandate that a petition extension be filed before the validity of the petition being extended has expired. *Id.* As opposed to a discretionary extension of stay application, there is no discretion to grant a late-filed petition extension. U.S. Citizenship and Immigration Services (USCIS) does not have the discretion to disregard its own regulations, even if it would benefit a petitioner. *See Reuters Ltd. v. F.C.C.*, 781 F.2d 946 (C.A.D.C. 1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). This non-discretionary basis for denial renders the remaining issues in this proceeding moot. Thus, the appeal must be dismissed and the petition denied.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

## II. ANALYSIS OF REMAINING ISSUE

Although the non-discretionary basis for denial set forth above renders the remaining issue in this proceeding moot, we will nevertheless review the director's second basis for denial in this matter, which focused on the petitioner's failure to properly complete the Form I-129 petition in accordance with the form's instructions. Specifically, the director found that the petitioner did not indicate whether an export license is required, as instructed on page 5, Part 6 of the Form I-129.

Upon review, we concur with the director's finding that the petitioner did not properly complete the Form I-129 petition in accordance with the form's instructions. The instructions state, "If you do not completely fill out the form . . . you will not establish a basis for eligibility and we may deny your petition." See also 8 C.F.R. § 103.2(a)(1) (incorporating the instructions into the regulations). By completing Part 6 of the form, the petitioner certifies that it has reviewed the Export Administration Regulations and the International Traffic in Arms Regulations and determined whether it will require a U.S. Government export license to release controlled technology or technical data to the beneficiary.<sup>2</sup> By signing the Form I-129, the employer certifies under penalty of perjury that the information provided on the form is true and correct.

In the instant case, the petitioner did not complete Part 6 of the Form I-129 and, thus it did not comply with the Form I-129 instructions. Accordingly, the petition was not properly filed and must be denied for this additional reason.

## III. CONCLUSION

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; see also *BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any

<sup>2</sup> The Export Administration Regulations (15 C.F.R. § 770-774) and the International Traffic in Arms Regulations (22 C.F.R. § 120-130) require U.S. persons, including companies, to seek and receive authorization from the U.S. Government before releasing controlled technology or technical data to foreign persons in the United States. U.S. companies must seek and receive a license from the U.S. Government before releasing controlled technology or technical data to nonimmigrant workers employed as H-1B, H-1B1, L-1, or O-1A beneficiaries.

one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.<sup>3</sup>

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<sup>3</sup> As the appeal will be dismissed for the reasons discussed above, we need not address the additional deficiencies and inconsistencies that we observe in the record of proceeding, including that there are a number of discrepancies in the documents provided by the petitioner including that the Labor Condition Application (case number [REDACTED]) submitted with the petition has been altered and was certified by the U.S. Department of Labor for the occupational category "Healthcare Support Workers, All Other" for a period from 10/01/2009 to 09/30/2012. An inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. See 8 C.F.R. § 214.2(h)(10)(ii); see also 8 C.F.R. § 103.2(b)(1). USCIS reserves the right to make a formal finding of material misrepresentation or a finding of fraud in the future under separate proceeding.