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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 07 145 52740 Office: CALIFORNIA SERVICE CENTER Date: SEP 17 2007

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(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 nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a general contractor and it desires to employ the beneficiary as a carpenter pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b) for the period from April 18, 2007 to April 18, 2008. The Department of Labor (DOL) certified the temporary labor certification. The acting director approved two beneficiaries for H-2B classification but denied classification for one beneficiary who has reached the three-year maximum limit in H-2B classification.

On April 25, 2007, the director denied the H-2B classification for one beneficiary. The director noted that the beneficiary was previously granted H-2B status from January 7, 2004 to April 18, 2007 and since there was no evidence in the record to suggest that the beneficiary had departed the United States since his first arrival in 2004, the director concluded that the beneficiary had reached the maximum three-year period of stay in H-2B status.

On appeal, the petitioner states that the beneficiary arrived in Guam in January 4, 2004 and his H-2B status expired on April 30, 2004. The petitioner further asserted that the first extension petition was approved for the period of April 2004 until April 2005. The petitioner filed a second extension which was granted for the period of April 2005 until April 2006. The petitioner asserts that it is in "dire need" for the beneficiary's services and it will send the beneficiary "back home as soon as I can get replacement workers."

The regulation at 8 C.F.R. § 214.2(h)(2)(iv) states in pertinent part:

*(iv) H-2B and H-3 limitation on admission.* An H-2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act; an H-3 alien participant in a special education program who has spent 18 months in the United States under section 101(a)(15)(H) and/or (L) of the Act; and an H-3 alien trainee who has spent 24 months in the United States under section 101(a)(15)(H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

The regulation at 8 C.F.R. § 214.2(h)(2)(c) further states:

*(C) H-2A or H-2B extension of stay.* An extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification or for a period of up to one year, except as provided for in paragraph (h)(5)(x) of this section. The alien's total period of stay as an H-2A or H-2B worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

The AAO agrees with the director's decision and dismisses the appeal. The evidence on record confirms that the beneficiary was initially granted H-2B status on January 14, 2004, and thus upon filing the instant petition

on April 10, 2007, the beneficiary was continually present in Guam on H-2B classification for over three years. Therefore, the beneficiary had reached his maximum allowable time on H-2B status of three years when the instant petition was filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.