

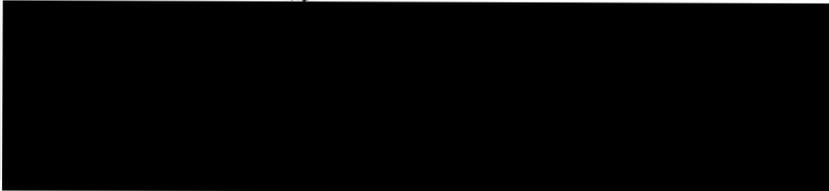
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U.S. Citizenship  
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FILE: WAC 08 022 50296 Office: CALIFORNIA SERVICE CENTER Date: **JAN 14 2009**

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

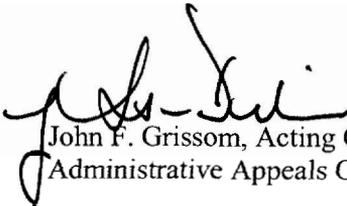
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting 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 rejected.

The petitioner is a nonprofit educational organization that seeks to employ the beneficiary as a study technology educator for a period of 24 months. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

An H-3 petition filed by the petitioner on behalf of the beneficiary was approved on May 20, 2007.<sup>1</sup> However, the director did not change the beneficiary's status to that of H-3. Rather, the beneficiary was notified that he would need to apply for such status at the U.S. consulate in Manila. The petitioner then contacted U.S. Citizenship and Immigration Services (USCIS) and requested an amended approval notice which would reflect a change of the beneficiary's status to that of H-3. The petitioner stated that it had intended to request that the beneficiary's status be changed to that of H-3 in the United States on the Form I-129.

In his September 13, 2007 letter, the director stated that the petitioner's request could not be honored, as marking the incorrect box the Form I-129 was error on the part of the petitioner, not on the part of the director. The director informed the petitioner that the only way in which an amended approval notice (which reflected a change of status) could be issued would be to file a new petition, with fee.

As such, the petitioner filed the instant petition on October 30, 2007. However, the director denied the petition on February 5, 2008. In his denial, the director stated that the requested change in status could not be approved, as the beneficiary's previous status had expired on May 8, 2007. Since the change in status could not be approved, there was no purpose in approving the underlying petition (and forwarding that approval to Manila), as the previous petition had already been approved and sent to Manila.

On appeal, the petitioner requests that the AAO change the beneficiary's status to that of H-3 in the United States, so that the beneficiary does not have to travel to Manila in order to change his status.

A request for change of status and extension of stay is not a petition within the meaning of section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1), and does not confer any of the appeal rights normally associated with a petition. The Form I-129 in this context is merely the vehicle by which information is collected to make a determination on the change of status application. A change of status application is adjudicated under the regulation at 8 C.F.R. § 248.3(a).

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<sup>1</sup> See EAC 07 153 50249, approved on May 10, 2007, and valid May 20, 2007 through May 19, 2009.

The regulation at 8 C.F.R. § 248.3(g) states the following:

*Denial of application.* When the application is denied, the applicant shall be notified of the decision and the reasons for the denial. There is no appeal from the denial of the application under this chapter.

The AAO has no jurisdiction over the change of status request. The AAO will not address the director's denial of the underlying petition: it is moot, as the beneficiary already has an approved petition. Therefore, the appeal will be rejected.

**ORDER:** The appeal is rejected.