

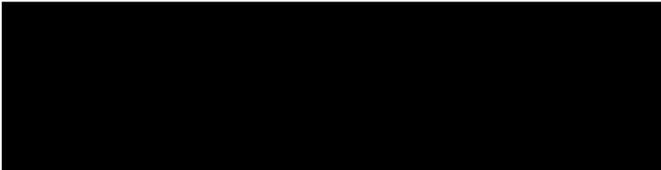


U.S. Department of Justice

Immigration and Naturalization Service

U

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Copy

File: EAC 98 149 53322 Office: Vermont Service Center Date:

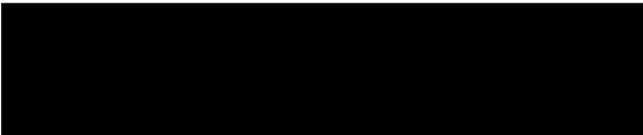
JAN 31 2000

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

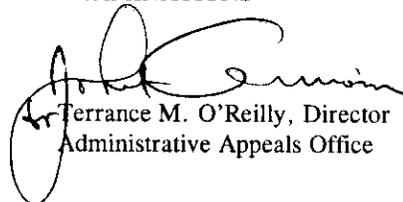
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director. A subsequent appeal was dismissed by the Associate Commissioner for examinations. The matter is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting firm which seeks to continue to employ the beneficiary for an additional three years. The director noted that the beneficiary had been in the United States in H-1B status, since July 27, 1992. The director determined that an extension could not be granted because it would allow the beneficiary to be in the United States in excess of the allowed six-year period.

On motion, counsel reiterates his argument that this extension should be allowed because the beneficiary temporarily left the United States from December 1, 1993 to April 10, 1994. Counsel further states that the Year 2000 project in which the alien is currently working is important to the petitioner at well as to the financial viability of the firm for which the work is being performed.

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), provides, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h)(15)(ii)(B), an extension of stay may be authorized for a period of up to three years for a beneficiary of an H-1B petition in a specialty occupation. The alien's total period of stay may not exceed six years. In addition, 8 C.F.R. 214.2(h)(13)(iii)(A) indicates that an H-1B alien in a specialty occupation who has spent six years 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) or (L) unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

As the beneficiary has spent more than six years in the United States in H-1 classification and is subject to the limitation of stay pursuant to 8 C.F.R. 214.2(h)(13)(iii)(A), further extension of the visa petition validity may not be granted. Additionally, the beneficiary of this petition must be physically present outside the

United States for one year before returning to the United States as an H or L nonimmigrant alien.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decisions of the director and the Associate Commissioner will be affirmed.

ORDER: The order of October 13, 1998 dismissing this appeal is affirmed.