

Interim Decision #3062

MATTER OF CORNELL UNIVERSITY

In Visa Petition Proceedings

EAC 880050007

Decided by Commissioner November 24, 1987

Regulations effective March 30, 1987, permit a total period of time in "H-1" classification of only 5 years or, in some extraordinary circumstances, up to a maximum of 6 years. Extraordinary circumstances exist, in the case of a plasma physicist who is a key member of a research team, where it is shown that denial of an extension of stay would result in serious hardship to the petitioner and to research projects of national significance in which the petitioner is involved under contract with United States Government agencies.

ON BEHALF OF PETITIONER: Pro se

The nonimmigrant visa petition was approved by the director and lies now before the Commissioner on certification. The director's decision will be affirmed.

The petitioner is an education and research institution which seeks to extend the validity of its visa petition previously approved on behalf of the beneficiary as a research scientist. The beneficiary was initially accorded "H-1" nonimmigrant status in August 1982. The director determined the petitioner had demonstrated the existence of extraordinary circumstances to warrant the granting the exceptional sixth year of temporary employment.

The record shows the beneficiary is a plasma physicist who is a key member involved in research projects under four government contracts.

Current regulations at 8 C.F.R. § 214.2, effective March 30, 1987, and published in the Federal Register, 52 Fed. Reg. 5750 (1987), have made 6 years the *maximum* limit for temporary stay. Title 8 C.F.R. § 214.2(h)(10)(ii) (1988) states that an alien who has spent 5 or 6 years in the United States under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (1982), may not be readmitted to the United States under the "H" visa

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classification unless that alien has resided and been physically present outside the United States for the immediate prior year. Title 8 C.F.R. § 214.2(h)(11)(ii) (1988) states in part that the total period of approvals, including the initial approval, may not exceed 5 years, except in extraordinary circumstances. The number of petitions filed is not relevant.

The beneficiary in this matter has been employed in the United States for an aggregate period of more than 5 years as of the date the petition was filed. In order to qualify for an extension into the sixth year, the petitioner must demonstrate the presence of exceptional circumstances. Evidence has been presented to clearly demonstrate that the unavailability of this beneficiary will create serious hardship to the institution and to the research projects of significant national interest under contract. The record shows the petitioner is involved in at least four research projects with the United States Department of Energy, the National Aeronautics and Space Administration, and the United States Office of Naval Research, in which the beneficiary is a key member of the research team. The petitioner is actively recruiting a replacement for the beneficiary but, as yet, has not been successful. It is concluded that the petitioner's request warrants the granting of an additional period of temporary employment in the United States based on extraordinary circumstances.

ORDER: The director's decision is affirmed.