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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:

LIN 04 032 50278

Office: NEBRASKA SERVICE CENTER

Date SEP 06 2006

IN RE:

Petitioner:
Beneficiary:



PETITION: *Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)*

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director (director), Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further investigation and entry of a new decision.

The petitioner is a software-consulting firm. It sought to permanently employ the beneficiary in the United States as a senior consultant. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor (DOL). The director determined that the petitioner had failed to establish that the beneficiary's educational credentials met the requirements of the approved labor certification.

The record indicates that the Immigrant Petition for Alien Worker (I-140) is the third application filed by the petitioner on behalf of the beneficiary. The first petition (LIN 00 037 52357) was filed for a third preference visa classification. It was approved and then automatically revoked on April 20, 2001, based on the petitioner's notice of withdrawal. This petition had been supported by an approved labor certification with a priority date of November 5, 1997.

The petitioner then filed a second I-140 (LIN 03 009 51423) on behalf of the beneficiary, this time seeking a second preference visa classification using a different labor certification with a priority date of February 15, 2002. This petition was denied and the subsequent appeal was dismissed on December 23, 2003.

The petitioner filed the instant petition (LIN 04 032 50278) seeking a third preference visa classification. The director denied the petition on December 28, 2004, finding that the beneficiary's educational credentials failed to meet the requirements of the labor certification with the February 15, 2002, priority date. This appeal was brought in response to the director's decision.

On appeal, counsel indicates that the I-140 (LIN 04 032 50278) filed on November 14, 2003, was intended to be adjudicated using the earlier labor certification that had supported the original I-140 filed and subsequently revoked. She asserts that the director analyzed the petition as though it was filed on behalf of a beneficiary seeking second preference classification as an alien holding an advanced degree based on the 02/15/02 labor certification. Although the file has little or no correspondence accompanying the filing of this I-140, which could have clearly explained which labor certification was intended to be used, it is noted that LIN 00 037 52357 was mentioned in an addendum attached to the I-140.

In this case, we agree with counsel. The labor certification underlying LIN 00 037 52357 that was originally submitted for a third preference visa classification should be transferred to this application for a third preference classification and reviewed accordingly.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to conduct further investigation relevant to the job offer described in the labor certification underlying the I-140 previously filed under LIN 00 037 52357. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.