

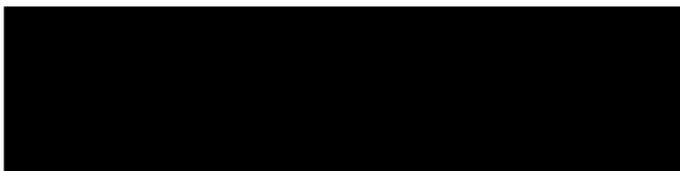
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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FILE: EAC 05 209 52160 Office: VERMONT SERVICE CENTER Date: **APR 18 2007**

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)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a software development and IT consulting company that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The instant petition was received at the service center on July 19, 2005. It contained a labor condition application (LCA) certified for employment in Woodbridge, Ohio. However, the Form I-129 listed the place of employment as Woodbridge, New Jersey.

In his October 28, 2005 request for additional evidence, the director requested an LCA certified for the correct location of intended employment.

In response, the petitioner submitted an LCA certified for employment in Woodbridge, New Jersey. However, this LCA was certified on November 7, 2005. The director denied the petition on the basis of the petitioner's failure to obtain a certified LCA prior to filing the petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that, when filing an H-1B petition, the petitioner must submit with the petition "[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary." Thus, in order for a petition to be approvable, the LCA must have been certified before the H-1B petition was filed. The submission of a certified LCA certified subsequent to the filing of the petition satisfies neither 8 C.F.R. § 214.2(h)(4)(i)(B)(1) nor 8 C.F.R. § 214.2(h)(4)(iii)(B)(1). CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). As such, the AAO finds that the director's denial of the petition was proper.

On appeal, the petitioner submits a copy of the LCA certified for employment Woodbridge, Ohio, which was submitted with the initial filing. The petitioner has handwritten "NJ" in the "state" field of the LCA and obscured the former entry, which read "OH." However, the petitioner has not satisfied the regulation.

This LCA, case number I-05188-1881355, was certified on July 7, 2005 for employment Woodbridge, Ohio. The petitioner's handwritten changes on a certified LCA do not create Department of Labor certification for employment in Woodbridge, New Jersey. Only the Department of Labor may certify an LCA. The record still lacks an LCA certified for employment in Woodbridge, New Jersey prior to the filing of the petition.

On appeal, the petitioner states the following:

When we filed initially, the LCA was incorrectly listed as Woodbridge, OH, instead of Woodbridge, NJ. It was purely TYPO and we really apologize for the mistake.

However, the petitioner's failure to procure an LCA certified for the location of intended employment prior to filing the H-1B petition precludes its approval, and the regulations contain no provision for discretionary relief from the LCA requirements.<sup>1</sup> Accordingly, the AAO will not disturb the director's denial of the petition.

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.

**ORDER:** The appeal is dismissed. The petition is denied.

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<sup>1</sup> This denial is without prejudice to the filing of a new petition, with certified LCA and fee.