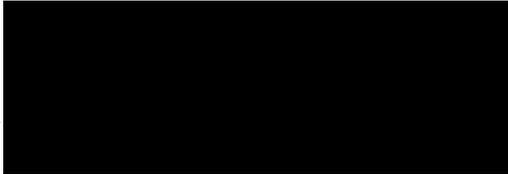




U.S. Citizenship
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FILE: WAC 04 121 52018 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a tourist business. It seeks to employ the beneficiary as a methods and procedures analyst and to continue his classification 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 director denied the petition on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation. As a second ground of denial the director noted that the labor condition application (Form ETA 9035) previously filed by the petitioner and certified by the Department of Labor had expired, and was therefore invalid. Accordingly, it did not comply with section 212(n)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1), which specifies that:

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.

On appeal counsel asserts that the service center “never requested” the labor certification and “does not understand the responsibilities or duties required by the industry.” On the appeal form, which was filed September 28, 2004, counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. No such brief or evidence was filed in the next 30 days, however, and in a telefax to the AAO dated June 8, 2005 counsel confirmed that no appeal brief or evidence has been filed in support of the appeal.

Though counsel points out on appeal that the service center never specifically requested a new labor certification for the beneficiary’s extension of stay in H-1B status, that requirement is clearly stated in the Act and the regulations. In addition to the provisions cited by the director in his decision, the regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(1) specifies that a request for extension of stay in H-1B visa status “must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor that the petitioner continues to have on file a labor condition application valid for the period of time requested for the occupation.” The petitioner did not provide, or have, a certified labor condition application for the requested employment period of March 1, 2004 to March 1, 2006 at the time the instant petition was filed, in March 2004, requesting an extension of stay for the beneficiary.

As specified in 8 C.F.R. § 103.3(a)(1)(v), “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” The petitioner has not specifically identified any erroneous conclusion of law or statement of fact in the decision. Accordingly, the appeal must be summarily dismissed.

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