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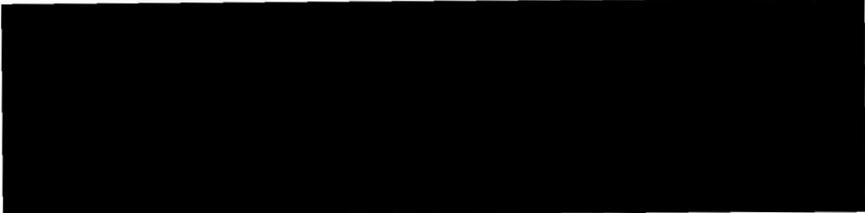
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U.S. Citizenship  
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FILE: WAC 04 151 50303 Office: CALIFORNIA SERVICE CENTER Date: **JUL 14 2006**

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 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 an accounting firm that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to extend the classification of 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 April 29, 2004, but it did not contain a certified labor condition application (LCA). As such, the director requested a certified LCA in a July 16, 2004 request for evidence. In response, the petitioner submitted an LCA that had been certified on July 22, 2004, and 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.

On appeal, counsel states that, while a petition cannot be approved without a certified LCA, "there is nothing in the laws cited by the Service in its decision that prohibits the subsequent filing of [a] Labor Condition Application." Counsel notes that obtaining a certified LCA is a procedural requirement, and that a certified LCA does not authorize employment and is not determinative of a prospective worker's eligibility for a requested classification.

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).

Counsel also notes that the beneficiary was in valid nonimmigrant status at the time the instant petition was filed. However, the regulations contain no provision for discretionary relief from the LCA requirements.

The petitioner's failure to procure a certified LCA prior to filing the H-1B petition precludes its approval, and 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.