

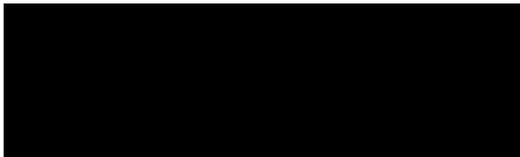
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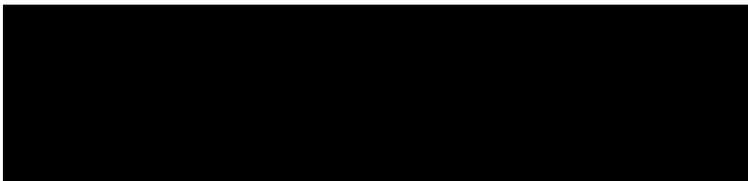


FILE: EAC 05 055 50230 Office: VERMONT SERVICE CENTER Date: **AUG 20 2007**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is software consulting company that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, seeks to extend the beneficiary's nonimmigrant classification as a 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's February 3, 2005 request for additional evidence; (3) counsel's March 1, 2005 response to the director's request; (4) the director's June 8, 2005 denial letter; (5) the Form I-290B and supporting documentation, dated June 30, 2005; (6) counsel's July 15, 2005 appellate brief and supporting documentation; (7) the AAO's August 29, 2006 remand of the petition to the director; (8) the director's October 30, 2006 request for additional evidence; and (9) the director's May 24, 2007 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

In its August 29, 2006 decision, the AAO determined that, although the beneficiary qualifies to perform the duties of a specialty occupation, the petitioner had not established that the proposed position qualifies for classification as a specialty occupation, or that the petitioner was in compliance with the terms and conditions of its certified labor condition application (LCA). Accordingly, the AAO remanded the matter to the director for his determination of whether the proposed position qualifies for classification as a specialty occupation, and whether the petitioner was in compliance with the certified LCA, with certification to the AAO should his decision be adverse to the petitioner.

In his October 30, 2006 request for additional evidence, the director afforded the petitioner 84 days to submit evidence regarding the proposed position's status as a specialty occupation, as well as evidence that it was in compliance with the certified LCA. However, the petitioner did not respond. Accordingly, the director denied the petition and certified his decision to the AAO for review. The contents of these documents are part of the record and their contents need not be repeated here.

As the petitioner chose not to respond to the director's request for additional evidence or submit evidence to the AAO to rebut the findings of the director's notice of certification, it has not established that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Nor has the petitioner submitted any evidence to establish that it is compliance with the terms and conditions of the certified LCA. Therefore, the director's decision will be affirmed.

For reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 director's May 24, 2007 decision is affirmed. The petition is denied.