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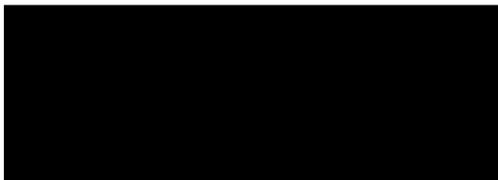
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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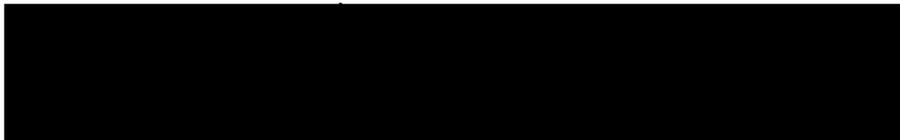
FILE: WAC 06 278 51940 Office: CALIFORNIA SERVICE CENTER Date: JAN 25 2008

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:



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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is an electronics company engaged in defense related programs. It seeks to employ the beneficiary as a purchasing and logistics manager, and endeavors to classify him 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 stating that the petitioner had not supplied a certified labor condition application (LCA) for the intended place of employment. The petitioner supplied a certified LCA for Chelmsford, MA. The director noted that the petitioner's letter offering employment to the beneficiary (October 10, 2003) states that the beneficiary will be working in New York, NY. The petitioner's permanent address is in New York, NY, and his pay stubs note a New York address. Thus, the director denied the petition. The petitioner states that the beneficiary had always worked at its offices in Chelmsford, MA. It had intended to open an office in New York, but never did so. As a result, the petitioner states that the beneficiary continues to work at its Chelmsford, MA office. The petitioner further states that the beneficiary resides in Chelmsford, MA during the week, but returns to New York on the weekends where he maintains a permanent address.

The issue to be discussed in this proceeding is whether a certified LCA was obtained prior to the filing of the Form I-129 petition.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 101(a)(15)(H) of the Act defines an H-1B nonimmigrant as:

[A]n alien who is coming temporarily to the United States to perform services . . . in a specialty occupation . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary of Labor an application under section 212(a)(n)(1) . . . .

Title 8, Code of Federal Regulations, part 214.2(h)(4)(iii)(B)(1) provides that the petitioner shall submit with an H-1B petition "a certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary." The regulations further provide:

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.

8 C.F.R. § 214.2(h)(4)(i)(B)(1).

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(1) indicates that any request for extension 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 an LCA valid for the period of requested employment.

Pursuant to 8 C.F.R. § 103.2(b)(12), “an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. . . .” The Form I-129 petition states that the beneficiary will be employed in Chelmsford, MA. The petitioner stated in response to the director’s request for evidence, that the beneficiary will be employed in Chelmsford, MA only. Although the initial letter of intent submitted in connection with a previously approved H-1B petition indicated that the petitioner intended to employ the beneficiary in New York in 2003, the beneficiary has not been previously employed by the petitioner in New York and its current intention is to employ him in Chelmsford, MA. The petitioner, on appeal, adequately addressed the director’s concerns about the beneficiary’s work location. As stated above, the beneficiary works in Chelmsford, MA during the week, but returns to New York on weekends and other times when he is not working. He chooses to maintain a permanent address in New York, for personal reasons, though he does not work there. As such, the LCA submitted by the petitioner for Chelmsford, MA is properly certified for the beneficiary’s work location, and the director’s decision to the contrary is withdrawn.

The petition may not be approved, however, as the record does not establish that the position is a specialty occupation. This matter shall be remanded to the director to determine whether the proffered position (Purchasing Manager) qualifies as a specialty occupation.

It is noted that the Department of Labor’s *Occupational Outlook Handbook (Handbook)* states that qualified individuals for purchasing managers, buyers and purchasing agents positions may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants with a college degree and familiarity with the products they sell, as well as wholesale and retail practices. It is also noted, however, that some retail firms promote qualified employees to assistant buyer positions, while others recruit and train college graduates. Most employers use a combination of methods for filling these positions. Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor’s degree program with a business emphasis, and many manufacturing firms put a greater emphasis on formal training, preferring applicants with a bachelor’s or master’s degree in engineering, business, economics, or one of the applied sciences. The fact remains, however, that while some employers prefer applicants with a bachelor’s degree, a degree requirement in a specific specialty does not appear to be a minimum requirement for entry into the offered position. Many employers still fill buyer positions by promoting experienced employees who qualify for the position through work experience and training rather than a bachelor’s level education in a specific specialty. The director shall issue a new decision, after considering all of the evidence, determining whether the proffered position qualifies as a specialty occupation, and if relevant whether the beneficiary is qualified to perform the services of a specialty occupation.. The director may request such additional evidence as she deems necessary in rendering her decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner shall be certified to the AAO for further review.