

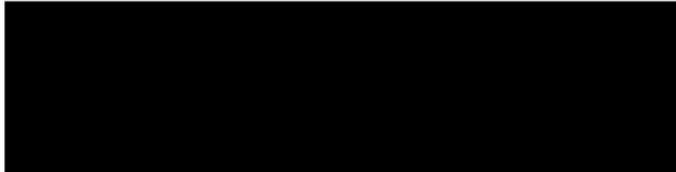
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U.S. Citizenship
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Services

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FILE: EAC 04 262 50655 Office: VERMONT SERVICE CENTER Date: NOV 17 2008

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

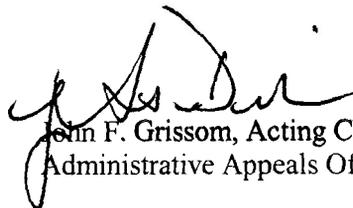
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The director revoked approval of 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 a software consulting and development company that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, endeavors 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 record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, received at the service center on September 20, 2004; (2) the director's November 8, 2004 request for additional evidence; (3) the petitioner's January 31, 2005 response to the director's request; (4) the director's March 4, 2005 denial letter; (5) the Form I-290B and supporting documentation, received on March 23, 2005; (6) the AAO's December 11, 2006 remand of the petition to the director; (7) the director's February 20, 2007 request for additional evidence; (8) the director's notice of certification; and (9) the AAO's September 18, 2008 notice to the petitioner that it had a period of 30 days in which to submit a brief. The AAO reviewed the record in its entirety before issuing its decision.

In its December 11, 2006 decision, the AAO determined that, although the petitioner meets the regulatory definition of a United States employer, it had not established that the proposed position qualifies for classification as a specialty occupation. Accordingly, the AAO remanded the matter to the director for his determination of whether the proposed position qualifies for classification as a specialty occupation, with certification to the AAO should his decision be adverse to the petitioner.

In his February 20, 2007 request for additional evidence, the director afforded the petitioner 12 weeks to submit evidence regarding the proposed position's status as a specialty occupation. 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 demonstrated 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). 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 decision is affirmed. The petition is denied.