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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*DI*

FILE: LIN 02 100 51720 Office: NEBRASKA SERVICE CENTER Date: 11/17/05

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:

[REDACTED]

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the petitioner filed an appeal. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further examination as to whether the beneficiary was qualified to perform the duties of a specialty occupation. The director denied the petition and certified his decision to the AAO. The director's decision will be affirmed. The petition will be denied.

The petitioner is engaged in breeding, training, and showing national-caliber Arabian and hunter-jumper horses. It seeks to employ the beneficiary as a manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. In a subsequent appeal, the AAO withdrew the director's decision and remanded it to the director for further examination of issues related to the beneficiary's qualifications.

The director requested additional evidence from the petitioner, but received no response. The director subsequently denied the petition because the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 103.2(a)(13):

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. . . .

The record reflects that on September 12, 2003, the director requested additional evidence from the petitioner concerning the instant petition. Due to a technical error in the address on the Request for Evidence (RFE), the director sent out a second RFE on December 18, 2003. As no response was received, the director denied the petition.

Counsel submits additional information in response to the director's notice of certification.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on certification. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on certification. Consequently, the director's decision is affirmed.

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**ORDER:** The director's March 22, 2004 decision is affirmed. The petition is denied.