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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY



File: WAC-01-056-53145 Office: California Service Center

Date: **MAR 12 2003**

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: SELF-REPRESENTED

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

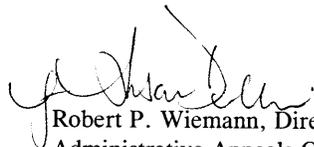
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software consulting firm with ten employees and a stated gross annual income of \$3 million. It seeks to extend the employment of the beneficiary as a programmer analyst for a period of just under three years. The director determined that the beneficiary would not be working at the location listed on the Form ETA 9035 Labor Condition Application and determined that the petitioner has not complied with the conditions of the labor condition application.

On appeal, counsel argues that the petitioner filed an amended labor condition application listing an accurate address for the site of the beneficiary's employment once the location of his work assignment was established. Counsel includes a copy of the amended labor condition application submitted to the Department of Labor.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation as described in paragraph (h)(4)(iii)(A) of this section,...

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application. This application shows that the beneficiary would be employed for a period of just under three years at [REDACTED]

[REDACTED] However, in response to a subsequent Service (now the Bureau) request for additional evidence to support the petition, including an itinerary of locations where the beneficiary would work, the petitioner submitted a letter that indicated that the beneficiary would be working at various locations providing services to clients throughout the United States.

The director determined that the petitioner has not complied with the terms of the labor condition application because it has not established that the beneficiary would be employed at the [REDACTED] address in Phoenix, Arizona should the petition be approved. The director concluded that the labor condition application contained in the record was not valid and denied the petition.

On appeal, the petitioner provides a new labor condition application listing Lancaster, New York as the location where the beneficiary would be working. The petitioner also submits a statement that it will comply with the terms of the labor condition application, and declares that the beneficiary will be providing services to its client, Sealing Devices, Inc., at [REDACTED] in Lancaster, New York. Nevertheless, the new labor condition cannot be considered to be valid as it has not been properly filed, completed, and endorsed by the Department of Labor. Therefore, the record does not contain sufficient and proper documents to establish the petitioner's compliance with 8 C.F.R. § 214.2(h)(4)(iii)(B)(1). The petitioner has not overcome the objections of the director because the record as it is presently constituted does not contain a valid and properly certified labor condition application. For this reason the petition may not be approved.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.