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Washington, DC 20536



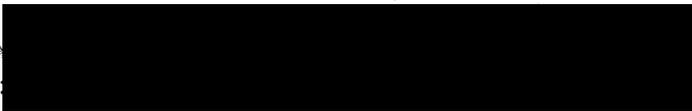
U.S. Citizenship  
and Immigration  
Services



FILE: LIN 00 232 53195 Office: NEBRASKA SERVICE CENTER

Date: APR 16 2004

IN RE: Petitioner:  
Beneficiary:



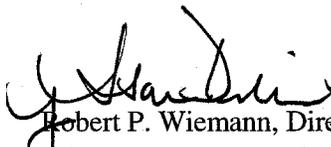
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director approved the nonimmigrant visa petition. The director then revoked approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed. The petition will be revoked.

The petitioner is a software development and computer consulting company that seeks to employ the beneficiary as a programmer analyst. The petitioner 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). On August 7, 2002, the director issued a notice of intent to revoke the approval based on information from the United States Consulate in Chennai, India, indicating that the petitioner has been defunct since at least September 21, 2001. The petitioner was given 30 days to submit evidence in support of the petition and in opposition to the revocation. On September 6, 2002, counsel responded to the notice.

Counsel asserted that upon receiving notice regarding the petitioner's dissolution from what was then the Immigration and Naturalization Service, the petitioner contacted its accountant. The accountant then prepared a letter stating, "By mistake we [the accountant] failed to file the domestic annual report for the year 2001, as a result of which the corporation was dissolved in January 2002. Please note that this was an unintentional error on my part, and the petitioner was not aware of the same, and has continued to pay taxes during this term." The corporation was subsequently reinstated, as of July 3, 2002. Counsel also submitted various tax and business documents to establish that the petitioner is not only currently in business, but was in business during the period the company was legally dissolved. On appeal, counsel submits further documentation to establish these same facts.

The beneficiary entered the United States in February 2002. It is clear, from the documentation submitted, that the petitioner remained in business during the time it was technically dissolved, and that it remains in business today. Notwithstanding this fact, the petitioner was legally non-existent during the period January-July 2002. Since the beneficiary entered the country on an H-1B visa in February 2002, a time during which the petitioner did not legally exist, the petition was not valid at that time. While it does not appear that there was any fraud in this situation, it remains that the beneficiary could not legally enter the country to work for a company that does not exist.

Beyond the decision of the director, the AAO notes that if the petitioner had not been dissolved, it would still be in violation of the regulations. The original labor condition application (LCA) was filed for the beneficiary to work in the Chicago area, which he seems to have done for the first three months after his arrival. The evidence in the record indicates that the beneficiary then worked in New Jersey. There is no evidence, however, of an amended petition and LCA having been filed, as required by the regulations. *See* 8 C.F.R. § 214.2 (h)(2)(i)(E).

Since the petitioner was not, in fact, a legal entity at the time the beneficiary entered the country to work for it, the petition must be revoked.

**ORDER:** The decision of the director is affirmed and the petition is revoked.