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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE: WAC 02 084 54871 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

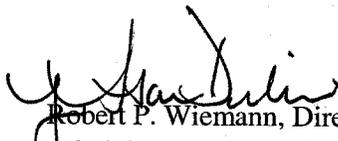
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is an environmental testing laboratory that seeks to employ the beneficiary as a soil scientist. 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).

The director denied the petition because the beneficiary, a citizen of Iran, is ineligible to enter the United States pursuant to Executive Order 12,959 (E.O. 12, 959). On appeal, counsel states, in part, as follows:

The prohibition created in [E.O.] 12,959 only applies to persons who intend to come to the United States to work as an agent, employee, or contractor of the foreign entity, and not to persons who intend to come to the United States to work for a U.S. entity. . . .

....

Since the beneficiary is neither an agent, nor employee or contractor of the Government of Iran or a business entity or other organization in Iran, but rather an employee of a California Corporation, his services are not prohibited by the regulation. . . .

The director denied the petition pursuant to section 1(a) of Executive Order 12,959, which prohibits "the importation into the United States . . . of any goods or services of Iranian origin." In April 1999, however, the Department of Treasury's Office of Foreign Assets Control (OFAC) published regulations that clarified the rules pertaining to the Iranian sanctions and the H-1B classification. Specifically, 31 C.F.R. § 560.505(c) provides in part:

Persons otherwise qualified for a visa under categories . . . H (temporary worker) . . . are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization of Iran.

In this case, the record does not indicate that the beneficiary is coming to the United States to work as an agent, employee or contractor of the Government of Iran or a business entity or other organization of Iran. Rather, the beneficiary has received an offer of employment from a U.S. business. As such, the petitioner has overcome the objection of the director.

The director has not determined whether the proffered position qualifies as a specialty occupation or whether the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the matter will be remanded to the director to make such determinations and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.