U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 03 054 56696 Office: VERMONT SERVICE CENTER Date: JUN 02 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Marin Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a corporation engaged in the business of developing and enhancing computer application software. Pending the outcome of an employment based immigration petition that it is in the process of filing on behalf of the beneficiary, the petitioner seeks authorization to continue employing the beneficiary as an H-1B 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 petitioner had not provided evidence to establish that the beneficiary was entitled to an extension of his stay in the United States beyond the six-year limit that section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), authorizes for aliens in H-1B status.[1]

When the service center first reviewed the petition, in April 2003, the beneficiary had exceeded the six years that he was authorized to stay in the United States in H-1B status. (See paragraph 6 of the director's request for additional evidence (RFE)). Accordingly, the director issued an RFE asking for evidence that the beneficiary's H-1B status could be extended under the relevant provisions of the American Competitiveness in the 21st Century Act, Pub. L. No. 106-313, 114 Stat. 1251 (2000) (AC21) and the 21st Century Department of Justice Appropriations Act, Pub. L. 107-273, 116 Stat. 1836 (2002) (21st Century DOJ Appropriations Act). Section 106(a) of the 21st Century DOJ Appropriations Act amended section 106(a) of AC21 to permit H-1B nonimmigrants to obtain an extension of H-1B status beyond the 6-year maximum period if 365 days or more have elapsed since the filing of any of the following:

> (1) Any application for labor certification under section 212(a)(5)(A) of such Act. . .in a case in which certification is required or used by an alien to obtain status under section 203(b) of such Act....
>
> (2) A petition described in section 204(b) of such Act...to accord the alien a status under section 203(b) of such Act.

The RFE requested that the petitioner provide a letter from the Department of Labor (DOL) affirming the date of its receipt of the application for labor certification filed on behalf of the beneficiary, or copies of any these DOL documents pertaining to an employment based immigrant petition regarding the beneficiary: (1) an approved labor certification application, (2) a notice of receipt and filing of a Form I-140, or (3) a notice that a Form I-140 had been approved.

In its reply to the RFE, the petitioner submitted a letter from an attorney "to confirm that an Application for Alien Employment Certification (ETA 750) was filed by our law firm on behalf of [the petitioner] and [the

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[1] This provision of the Act states, "In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission of such non-immigrant may not exceed 6 years."

beneficiary] on February 6, 2002." The petitioner's letter of reply to the RFE stated that the petitioner would later provide a letter from DOL confirming that it had received an application for labor certification on Form ETA 750 within the time period specified in the RFE, that is, "on or before at least 365 days prior to the expiration of the beneficiary's six-year H-1B1 stay." All evidence submitted in response to a CIS request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11).

The director properly found that the personal statements of the petitioner and its attorney do not constitute evidence that the application for labor certification had been filed within the required timeframe, stating:

> You have failed to provide sufficient proof that (1) a Labor Certification (Form ETA-750) was filed with the Department of Labor, and (2) said Labor Certification was filed with the Department of Labor 365 days prior to the anniversary of the beneficiary's six-year limit.

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the statements of the petitioner and its attorney were not responsive to the RFE.

On appeal, the petitioner submits evidence in the form of a DOL letter of the type requested in the RFE, affirming DOL's receipt of an Application for Alien Employment Certification (ETA 750) within the specific period described in the RFE. The petitioner filed this letter on July 10, 2003. The AAO will not consider this letter, as it was not submitted when requested by the RFE. The RFE explicitly informed the petitioner that evidence it requested would not be considered if submitted later than July 3, 2003 - which was 94 days after the RFE was issued.

The purpose of the RFE 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). As in the present matter, where 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 appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *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 appeal. Consequently, the appeal will be dismissed.

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 appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.