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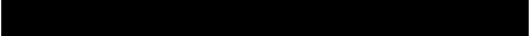
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**U.S. Citizenship
and Immigration
Services**



FILE: LIN 02 267 50599 Office: NEBRASKA SERVICE CENTER Date: **MAR 09 2004**

IN RE: Petitioner: 
Beneficiary: 

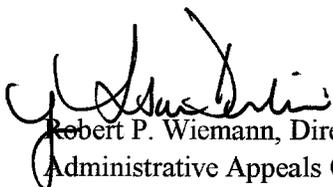
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a rehabilitation services company that seeks to extend employment of the beneficiary as a physical therapist. 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 petitioner did not submit a valid labor condition application (LCA) with the petition. On appeal, counsel states that the petitioner was acting without counsel until the time of the appeal, and inadvertently submitted uncertified labor condition applications with the petition and in response to the director's request for evidence.

The petition was submitted on August 21, 2002 with an uncertified LCA. On November 5, 2002, the director requested additional evidence, including a certified LCA. The petitioner responded on November 14, 2002, again submitting an uncertified LCA. The director denied the petition on December 19, 2002. On appeal, counsel submits a certified LCA, dated August 1, 2000, covering the period August 1, 2000 through July 6, 2003. It is clear that the petitioner had a valid LCA at the time of filing the petition. The LCA has now expired.

As the director based his decision on whether a valid LCA existed, and counsel has established that it did, the matter will be remanded to the director for further consideration. The director must afford the petitioner reasonable time to provide evidence that a current valid LCA exists, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's December 19, 2002 decision 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 Administrative Appeals Office for review.