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U.S. Citizenship  
and Immigration  
Services



FILE: SRC 02 139 51903 Office: TEXAS SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

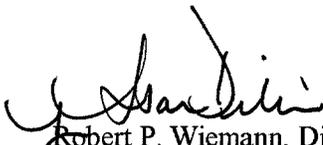
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer consulting firm that seeks to employ the beneficiary as a programmer/analyst. The director denied the petition because the petitioner failed to submit a timely certified labor condition application that indicated the proper dates of employment.

On appeal, the petitioner submits: (1) a certified labor condition application; (2) a letter dated September 13, 2002; and (3) a copy of the beneficiary's degree, transcripts, certification, and educational evaluation. The petitioner requests that Citizenship and Immigration Services (CIS) accept the documents.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the petitioner filed a timely labor condition application indicating the proper period of employment.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 . . . .

Furthermore, pursuant to 8 C.F.R. § 214.2(h)(15)(ii)(B), the request for an extension must be accompanied by evidence that the petitioner continues to have on file a valid labor condition application for the period of time requested for the occupation.

On September 10, 2002, the director denied the petition, finding that the petitioner failed to provide a certified labor condition application that indicated the proper dates of proposed employment. The director stated that the record indicated that the beneficiary would be in valid status until July 1, 2002, and that on the Form I-129 the petitioner requested an extension of stay until December 15, 2004. However, the submitted certified labor condition application had specified the period of employment from July 17, 2001 until July 1, 2002. Thus, the director determined that the petition would be denied because the petitioner failed to submit a certified labor condition application that corresponded to the period of employment indicated on the petition.

On appeal, the petitioner states that it failed to submit the proper evidence, and requests that CIS accept its certified labor condition application and other documents.

The record in this proceeding contains (1) a labor condition application that the Department of Labor certified on September 23, 2002, indicating that the period of employment is from September 23, 2002 until December 15, 2004; (2) a labor condition application that the Department of Labor certified on July 17, 2001, indicating that the period of employment is from July 17, 2001 until July 1, 2002; and (3) the I-129 petition received on April 3, 2002, which indicates the period of proposed employment is "now" until December 15, 2004.

Regulations at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) provide that, before filing a petition for H-1B classification, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. And, regulations at 8 C.F.R. § 214.2(h)(15)(ii)(B) state that a request for extension must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor that indicates that the labor condition application is valid for the period of time requested for the occupation.

Based on the evidence in this record, the AAO finds unacceptable the labor condition application initially filed with the I-129 petition. The period of employment indicated on the labor condition application (July 17, 2001 until July 1, 2002) does not correspond to the period of time requested for the occupation as stated in the I-129 petition ("now" until December 15, 2004). The submitted labor condition application on appeal is also unacceptable because the Department of Labor certified the labor condition application after the filing of the petition. Moreover, the record indicates that the beneficiary is in valid status until July 1, 2002; however, the period of employment indicated on the labor condition application submitted on appeal is from September 21, 2002 until December 15, 2004. Thus, the labor condition application neither encompasses the full duration of the beneficiary's employment nor corresponds to the period of time requested for the occupation in the petition. Accordingly, the petition shall be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 361. The petitioner has not sustained that burden.

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