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U.S. Citizenship
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Services



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FILE: WAC 01 100 51311 Office: CALIFORNIA SERVICE CENTER Date: MAY 06 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 Korean language newspaper that seeks to employ the beneficiary as a reporter. The petitioner, therefore, 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 failed to submit a timely certified labor condition application.

On appeal, counsel submits a certified labor condition application (LCA), and requests that Citizenship and Immigration Services (CIS) accept the document.

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.

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 at 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

On May 29, 2002, the director denied the petition, finding that the petitioner failed to provide a certified LCA. The director stated that, in response to her request for evidence, the petitioner failed to submit a certified a LCA and evidence that the beneficiary had been in valid nonimmigrant status when the petitioning entity filed the petition.

On appeal, the petitioner requests that CIS accept its certified LCA and documentation regarding the beneficiary's nonimmigrant status.

The record in this proceeding contains: (1) a labor condition application that the Department of Labor certified on June 25, 2002, and (2) the I-129 petition that the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), received on February 23, 2001. Regulations at 8 C.F.R.

§ 214.2(h)(4)(iii)(B)(I) 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.

On June 18, 2001, the director issued a request for evidence (RFE) requesting that the petitioner submit additional documentation, including a more detailed job description for the proffered position, evidence that the beneficiary was currently maintaining valid nonimmigrant status, and evidence of a certified LCA. The petitioner provided a job description, a copy of a prevailing wage request filed with the State of California, and a letter from South Baylo University advising that the beneficiary was a full-time student until December 15, 1999. The petitioner did not provide the requested certified LCA. All evidence submitted in response to a Service request must be submitted at one time. 8 C.F.R. § 103.2(b)(11). Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The acting service center director denied the petition finding that the petitioner did not provide the requested certified LCA and that the petitioner had failed to establish that the beneficiary was in valid nonimmigrant status at the time the petition was filed.

On appeal, the petitioner submits an LCA that was certified on June 25, 2002, well after the date of the acting director's decision. The petitioner was put on notice of the required certified LCA and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Based on the evidence in this record, the petitioner has failed to comply with the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(B)(I). Accordingly, the petitioner shall be denied.

The AAO notes that the evidence submitted on appeal regarding the beneficiary's nonimmigrant status is the same evidence submitted in response to the request for evidence. The director correctly stated that the evidence fails to establish that the beneficiary had been in valid nonimmigrant status when the petitioning entity filed the petition.

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.

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