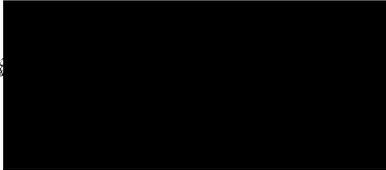


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U.S. Citizenship
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FILE: SRC 03 085 52894 Office: TEXAS SERVICE CENTER Date: APR 20 2005

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 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 provides electronic control systems design. It seeks to employ the beneficiary as an engineer (project engineer). The petitioner, therefore, endeavors to classify 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 on the basis that the petitioner had failed to file a certified labor condition application for H-1B Nonimmigrants (Form ETA 9035) (LCA) at the time of filing the Form I-129 petition, as required by Citizenship and Immigration Service (CIS) regulations. On appeal, the petitioner requests that CIS accept a certified LCA that was certified after the petition was filed.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that with the petition an H-1B petitioner shall submit “[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary.”

The record reflects that the present petition was filed on April 25, 2003, and that in response to the request for evidence, the petitioner had submitted an uncertified LCA. In light of these facts, the director’s decision to deny the petition accorded with the relevant CIS regulations, cited above. The petitioner failed to comply with the regulatory requirement for filing a certified LCA with the Form I-129.

The LCA that the petitioner submits on appeal has the certification date of December 9, 2003. Because this second LCA was certified on December 31, 2003, a date after the petition was filed, it does not remedy the deficiency upon which the director’s decision was based.

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.