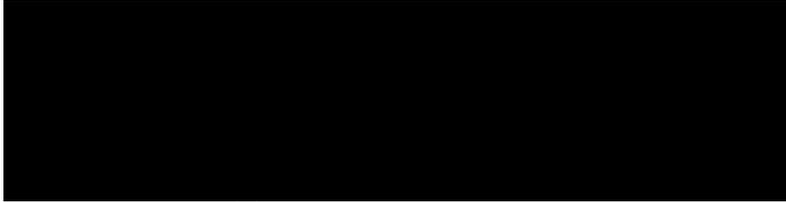




U.S. Citizenship
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FILE: WAC 04 062 50966 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 2005

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:



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 California Service Center 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 U.S. division of a multinational corporation that provides software for managing and securing electronic communications, with more than 40 employees in the United States. It seeks to hire the beneficiary as its North American product manager.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The director denied the petition under the language at 8 C.F.R. § 103.2(b)(5) which states:

(5) *Request for an original document.* Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked. There shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the Service to substantiate a previously submitted copy.

On December 31, 2003, the petitioner filed the Form I-129 with the California Service Center seeking H-1B status for the beneficiary, submitting a copy of the beneficiary's 1990 degree in computer science from Leicester Polytechnic in Leicester, England, but without an academic transcript. On January 6, 2004, the director issued a request for evidence asking the petitioner to provide an original of the beneficiary's Leicester Polytechnic transcript. Counsel responded to the director's request on January 26, 2004. At that time, he submitted a statement from the academic registrar of DeMontfort University, previously Leicester Polytechnic, which confirmed that the beneficiary had been awarded a bachelor of science degree in computer science on July 2, 1990. In the same statement, the registrar indicated that the university was unable to provide a course transcript for the beneficiary, that the institution did not begin producing academic transcripts until the "modularization" of its degree programs in 1997/1998 and, further, that it retained individual information on students and course content for six years only. The director found the explanation provided by the registrar to cast doubt on the authenticity of the evidence submitted with regard to the beneficiary's academic background. He subsequently denied the petition based on the petitioner's failure to provide the requested academic transcript.

The AAO does not agree with the director's reasoning in this matter and finds his reliance on 8 C.F.R. § 103.2(b)(5) to be inappropriate. The petitioner in the instant case responded to the director's request for evidence in a timely fashion, noting that transcripts sought by the director did not exist and documenting the reason for their absence from the record. The AAO finds this documentation to be credible and the director to have erred in denying the petition based on the petitioner's failure to provide the beneficiary's academic transcripts.

Therefore, the AAO will withdraw the director's decision and remand the instant case to the director for a decision on the merits of the petition. The director shall then issue a new decision based on the evidence of record, as it relates to the statutory and regulatory requirements for H-1B nonimmigrant visa eligibility.

ORDER: The director's decision of February 5, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.