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U.S. Citizenship
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FILE: WAC 03 170 52345 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005

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:

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

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 full service insurance agency that seeks to employ the beneficiary as a customer service representative. 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, finding that the petitioner failed to provide a timely certified labor condition application (LCA). On appeal, the petitioner requests that Citizenship and Immigration Services (CIS) accept the submitted certified LCA.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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.

The record in this proceeding contains: (1) an LCA that the Department of Labor (DOL) certified on December 22, 2003; (2) an uncertified LCA with the page link number 313775; (3) the I-129 petition and supporting documentation that CIS received on May 14, 2003; (4) the director's request for additional evidence; (5) the petitioner's response to the director's request; (6) the director's denial letter; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) provides that the petitioner shall submit with the H-1B petition a certification from the Secretary of Labor that it has filed an LCA. Based on the regulations, it is incumbent upon the petitioner to file the proper documents in order to establish eligibility for a benefit. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at the future date after the petitioner or

beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The record reflects that the petitioner's I-129 petition was received by CIS on May 14, 2003, and on appeal, the petitioner seeks to submit an LCA with a December 22, 2003 certification date. Because the petitioner seeks to submit an LCA with a December 22, 2003 certification date, which is subsequent to the filing of the H-1B petition on May 14, 2003, the petitioner fails to comply with CIS regulations set forth at 8 C.F.R. § 103.2(b)(12) and 8 C.F.R. § 214.2(h)(4)(iii)(B)(1). For this reason, the petition will be denied.

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.