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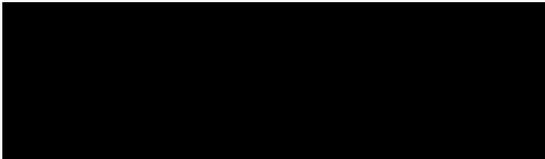
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 124 52781 Office: TEXAS SERVICE CENTER Date: MAR 18 2005

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 summarily dismissed. The petition will be denied.

The petitioner is a corporation engaged in architecture and design. Citizenship and Immigration Services (CIS) approved the previous petition for the petitioner to employ the beneficiary as an H-1B nonimmigrant worker in a specialty occupation - architect - 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). In order to continue this employment beyond the period approved in the initial petition, the petitioner endeavors to continue the beneficiary's H-1B classification and extend her stay.

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) as required by CIS regulations.

On appeal, counsel requests that CIS accept a certified LCA that was certified after the petition was filed and first submitted into the record as a part of the director's request for additional evidence. Counsel asks that the AAO consider that he had acted in good faith; made good faith efforts to secure a certified LCA prior to filing the petition; and had, by letter filed with the petition, notified CIS that he was awaiting a response to an LCA certification request that had been faxed to the Department of Labor's Education and Training Administration (DOLETA) according to that agency's instructions. Also, counsel notes that the earlier LCA qualified for certification, as the information on the Internet-certified LCA now submitted on appeal is the same as that provided on the faxed LCA form to which DOLETA did not respond.

The postdated LCA violates the relevant CIS regulations and precludes approval of the petition.

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 regulation at 8 C.F.R. § 214.2(h)(15)(i) states, in pertinent part:

General. The petitioner shall apply for extension of an alien's stay in the United States by filing a petition extension on Form I-129 accompanied by the documents described for the particular classification in paragraph (h)(15)(ii) of this section. . . .

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(1) states that a request for an H-1B extension of stay "must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor (DOL) that the petitioner continues to have on file a labor condition application valid for the period of time requested for the occupation."

Counsel acknowledges that he had not obtained a certified LCA prior to filing the petition. Thus, under the cited regulations, the petition must be denied. CIS regulations have no provision for discretionary relief from the LCA requirements. Therefore, the submission of the second LCA creates no basis for overturning the director's decision.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

As the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition, and as the petitioner presents no additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding 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.