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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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MAR 21 2005



FILE: SRC 03 009 50877 Office: TEXAS SERVICE CENTER Date:

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 service center director 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 an architectural design business that seeks to extend its authorization to employ the beneficiary as an architectural CAD drafter. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 proffered position is not a specialty occupation. The director found further that the petitioner's labor condition application was certified from December 14, 2001 until December 14, 2002, and not for the time period of the intended employment from December 15, 2002 until December 14, 2005. On appeal, the petitioner submits a statement and a new labor condition application.

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 petitioner has provided a certified labor condition application that is valid for the period of the requested extension. Nevertheless, that application was certified on August 7, 2003, a date subsequent to October 10, 2002, the filing date of the visa petition.

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B) provides that the request for extension must be accompanied by either a new or photocopy of the prior certification from the Department of Labor that the petitioner continues to have on file a labor condition application valid for the period of time requested for the extension. 8 C.F.R. 103.2(b)(12) requires that evidence must establish eligibility as of the time of filing. As such, the petitioner has not overcome this portion of the director's objections. For this reason, the petition may not be approved.

On appeal, the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in her finding that the proffered position is not a specialty occupation. As such, the petitioner has not overcome this portion of the director's objections. For this additional reason, the petition may not be approved. Accordingly, the AAO shall not disturb the director's denial of 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.