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FILE: LIN 04 020 52943 Office: NEBRASKA SERVICE CENTER Date: OCT 05 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a software development and consulting company that seeks to employ the beneficiary as a systems analyst/programmer-analyst. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, filed on October 29, 2003; (2) the director's May 17, 2004 request for additional evidence; (3) the petitioner's June 7, 2004 response to the director's request; (4) the director's August 17, 2004 denial letter; and (5) the Form I-290B and supporting documentation, filed on September 17, 2004; (6) the AAO's April 17, 2006 remand of the petition back to the director; (7) the director's May 10, 2006 request for additional evidence; and (8) the director's June 22, 2006 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

In its April 17, 2006 decision, the AAO found that the petitioner had overcome the concerns of the director as set forth in his August 17, 2004 denial. The record as constituted at that time did not, however, demonstrate (1) that the petitioner's proposed position qualified for classification as a specialty occupation, or (2) that the beneficiary qualified to perform the duties of a specialty occupation. Accordingly, the AAO instructed the director to make a determination on these issues, with certification to the AAO if the decision was adverse to the petitioner.

As such, the director issued a request for additional evidence on May 10, 2006. The petitioner did not respond within the 30-day period allotted by the director. The director therefore denied the petition on June 22, 2006, and certified his decision to the AAO. The AAO notes that the director properly gave notice to the petitioner that it had thirty days in which to submit evidence to the AAO in order to rebut the findings of the director.

The AAO has received no evidence from the petitioner to supplement the record. Accordingly, the information contained in the record of proceeding contains is identical to the previous time the AAO reviewed this file.

As noted in its previous decision, the AAO determined that the evidence of record at the time of the appeal did not establish that the proposed position is a specialty occupation. No evidence from the petitioner has been received to rebut this finding, nor has any information been submitted to rebut the similar finding of the director in his notice of certification.<sup>1</sup>

Accordingly, the AAO will affirm the director's decision to deny the petition.

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<sup>1</sup> The AAO notes that the director did not address the beneficiary qualification issue in either the May 10, 2006 request for additional evidence or his June 22, 2006 notice of certification. Consequently, the beneficiary qualification issue is not before the AAO at this time.

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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 director's June 22, 2006 decision is affirmed. The petition is denied.