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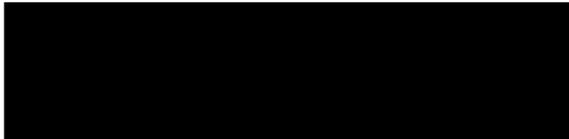
FILE: EAC 05 022 52282 Office: VERMONT SERVICE CENTER Date: **SEP 06 2006**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a co-educational religious boarding school. It seeks to employ the beneficiary as a Spanish teacher and to classify her 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 labor condition application (LCA) was not properly filed as it had not been signed by the petitioner's business manager.

On appeal, counsel asserts that the LCA was properly filed under the Act even though it was not signed by the petitioner's business manager. Counsel states that a signature is not required for certification of an LCA. Counsel maintains that the petitioner should be given an opportunity to provide a signed copy to the Attorney General, if necessary. According to counsel, the denial of the petition based on the unsigned LCA is not supported by the regulations, and he asserts that the beneficiary is eligible under 8 C.F.R. § 248.1 for change of status.

The AAO disagrees with counsel's contention that the regulations do not support the director's denial of the petition based on the submission of the unsigned LCA in support of the Form I-129 petition. The record contains the unsigned LCA, with the January 31, 2005 certification date, filed in support of the H-1B petition. The Department of Labor (DOL) and the Department of Homeland Security (DHS) regulations require that the beneficiary's employer or a representative of the employer submit a copy of the signed, certified Form ETA 9035 or ETA 9035E to CIS in support of the Form I-129 petition. The DOL regulation at 20 C.F.R. § 655.705(c)(1) and (3) state:

(1) The employer shall submit a completed labor condition application (LCA) on Form ETA 9035E or Form ETA 9035 in the manner prescribed in § 655.720. By completing and submitting the LCA, and by signing the LCA, the employer makes certain representations and agrees to several attestations regarding its responsibilities, including the wages, working conditions, and benefits to be provided to the H-1B nonimmigrants (8 U.S.C. 1182(n)(1)); these attestations are specifically identified and incorporated by reference in the LCA, as well as being set forth in full on Form ETA 9035CP. . . . The employer reaffirms its acceptance of all of the attestation obligations by submitting the LCA to the U.S. Citizenship and Immigration Services (formerly the Immigration and Naturalization Service or INS) in support of the Petition for Nonimmigrant Worker, Form I-129, for an H-1B nonimmigrant. See 8 CFR 214.2(h)(4)(iii)(B)(2), which specifies the employer will comply with the terms of the LCA for the duration of the H-1B nonimmigrant's authorized period of stay.

(3) The employer then may submit a copy of the certified, signed LCA to DHS with a completed petition (Form I-129) requesting H-1B classification.

The DOL regulation at 20 C.F.R. § 655.730(c)(2) and (3) state:

(2) Undertaking of the Employer. In submitting the LCA, and by affixing the signature of the employer or its authorized agent or representative on Form ETA 9035E or Form ETA 9035, the employer (or its authorized agent or representative on behalf of the employer) attests the statements in the LCA are true and promises to comply with the labor condition statements (attestations) specifically identified in Forms ETA 9035E and ETA 9035, as well as set forth in full in the Form ETA 9035CP. . . .

(3) Signed Originals, Public Access, and Use of Certified LCAs. . . . For H-1B visas only, the employer must submit a copy of the signed, certified Form ETA 9035 or ETA 9035E to the U.S. Citizenship and Immigration Services (USCIS, formerly INS) in support of the Form I-129 petition, thereby reaffirming the employer's acceptance of all of the attestation obligations in accordance with 8 CFR 214.2(h)(4)(iii)(B)(2).

As noted in the DOL regulations cited above, 8 C.F.R. § 214.2(h)(4)(iii)(B)(2), states that the petitioner will provide:

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.

The DHS regulation at 8 C.F.R. § 103.2(a)(2), which concerns the requirement of a signature on applications and petitions, states:

An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

Based on the DOL and DHS regulations, the LCA that is filed with CIS in support of the H-1B petition must be certified by the DOL and signed by the beneficiary's employer or a representative of the employer. Here, the petitioner filed a copy of the certified, but unsigned, Form ETA 9035E with CIS in support of the Form I-129 petition. Thus, the petitioner failed to comply with the regulatory requirements for H-1B visa classification as set forth at 8 C.F.R. § 103.2(a)(2), 8 C.F.R. § 214.2(h)(4)(iii)(B)(2), 8 C.F.R. § 655.730(c)(2) and (3). 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.