

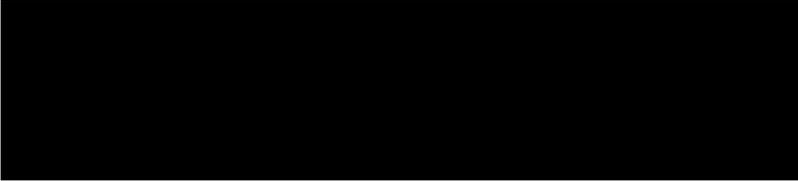
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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APR 17 2007

FILE: EAC 05 209 52230 Office: VERMONT 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 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.

*1a Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the Nebraska 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 software development and information technology consulting business. It seeks to employ the beneficiary as a 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 director denied the petition because the petitioner's corrected labor condition application (LCA), which was submitted in response to the director's request for evidence, was not certified prior to the filing of the petition. On appeal, the petitioner submits a statement.

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's statement that another petition has been filed on behalf of the beneficiary is noted. Each petition filing, however, is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). As such, for the purposes of this proceeding, the visa petition filed by the petitioner on July 19, 2005 will be considered.

The petitioner's statement that the mistake on the original LCA listing the work location as Woodbridge, OH, as opposed to Woodbridge, NJ, "was purely typo," is noted. The petitioner has provided a certified labor condition application with the correct work location of Woodbridge, NJ. Nevertheless, that application was certified on November 15, 2005, a date subsequent to July 19, 2005, the filing date of the visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(I) provides that *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. (Emphasis added.) Further, the regulation at 8 C.F.R. § 103.2(b)(12) requires that evidence must establish eligibility as of the time of filing.

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 petitioner's corrected LCA was not certified prior to the filing of the petition. As such, the petitioner has not overcome the director's objections. For this reason, the petition may not be approved. Accordingly, the AAO shall not disturb the director's denial of the petition.

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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 appeal is dismissed. The petition is denied.