

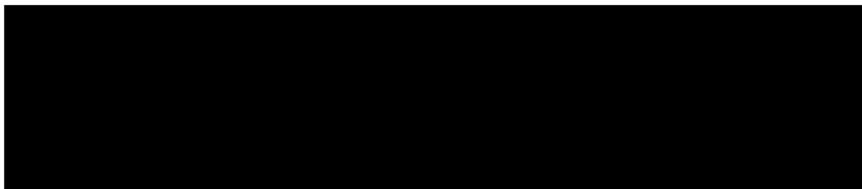
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
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Dr

FILE: EAC 06 119 51386 Office: VERMONT SERVICE CENTER

Date:

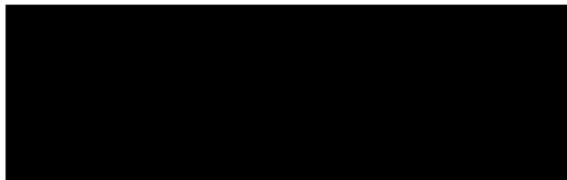
OCT 04 2007

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 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, Chief
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 dismissed. The petition will be denied.

The petitioner is a non-profit medical center that seeks to extend its authorization to employ the beneficiary as a PGY-3 Medical Resident. 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; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's affirmation. The AAO reviewed the record in its entirety before reaching its decision.

The director denied the petition because the labor condition application (LCA) was not certified prior to the filing of the I-129 petition. On appeal, counsel affirms that the petitioner filed an LCA that was "certified on April 27, 2006, covering the intended period of employment, June 17, 2006 to June 30, 2006."

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 an LCA that was certified on April 27, 2006, valid for the period from April 27, 2006 to June 30, 2006. The LCA, however, is not valid for the period of the requested extension that is reflected on the petition, July 1, 2005 to June 30, 2006. Further, the April 27, 2006 certification date is subsequent to the March 17, 2006 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 an LCA 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 the director's objection. 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 his finding that the LCA was not certified prior to the filing of the I-129 petition. As such, the petitioner

has not overcome the director's objection. 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.