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U.S. Citizenship  
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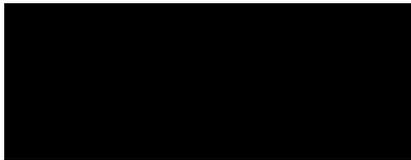
FILE: EAC 05 021 50055 Office: VERMONT SERVICE CENTER Date: **OCT 05 2007**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision will be withdrawn and the petition will be approved.

The petitioner is a computer software development and consulting company. It seeks to employ the beneficiary as a computer systems analyst 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 determining that the beneficiary was ineligible for extension of his H-1B nonimmigrant status because at the time of filing the Form I-129 on [REDACTED] 365 days or more had not passed since the filing of the beneficiary's Labor Certification, certified [REDACTED]

The record reflects that the beneficiary first entered the United States in H-1B status on [REDACTED] and that his six-year maximum period of stay expired on April 8, 2005. Thus, the petitioner must establish that a labor certification application was filed on the beneficiary's behalf on or before [REDACTED] 365 days prior to the expiration of the beneficiary's maximum authorized period of stay in H-1B visa status. The record reflects three labor certification applications filed on the beneficiary's behalf: (1) a labor certification application with a priority date of [REDACTED] filed on behalf of the beneficiary by [REDACTED] that was withdrawn [REDACTED]; (2) a labor certification application with a priority date of [REDACTED] filed on behalf of the beneficiary by [REDACTED] that was closed [REDACTED] and (3) a labor certification application with a priority date of [REDACTED] filed by the petitioner in process when the AAO rendered its decision on [REDACTED]

The AAO dismissed the appeal determining that the petitioner had failed to establish that either the February 5, 2002 labor certification application or the [REDACTED] labor certification application is presently filed or pending with the Department of Labor. On motion, counsel for the petitioner indicates that the instant petition was filed [REDACTED] and requested H-1B validity dates from [REDACTED] to [REDACTED] 2005. Counsel asserts that when the instant petition was filed, the labor certification application filed by [REDACTED] was still pending, thus establishing the beneficiary's eligibility for a seventh year extension pursuant to the American Competitiveness in the [REDACTED] (as amended by the [REDACTED] Appropriations Authorization [REDACTED])

The AAO has reconsidered the facts of this matter and withdraws its [REDACTED] decision, as the [REDACTED] labor certification application filed on behalf of the beneficiary had not been withdrawn when the instant petition was filed and continued to be in process throughout the duration of the requested seventh year of H-1B validity. Thus, the beneficiary is eligible for a seventh year of H-1B status. The petition will be approved.

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<sup>1</sup> This labor certification application was closed when the Backlog Processing Center did not receive a response from the employer expressing its desire to continue the processing of the labor certification application.

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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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.