

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



02

FILE: EAC 06 152 52039 Office: TEXAS SERVICE CENTER Date:

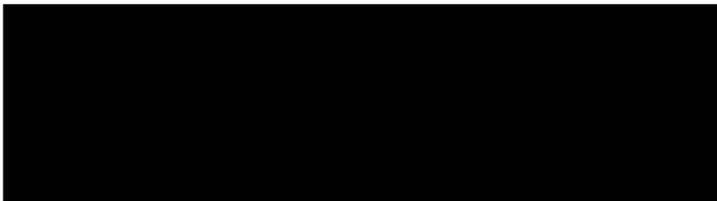
APR 24 2008

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.

A handwritten signature in black ink, appearing to read "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 The decision of the director will be withdrawn and the matter will be remanded for further consideration.

The petitioner is a biomedical research and development business that seeks to employ the beneficiary as a bio-statistical 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 beneficiary neither appeared for a January 18, 2007 interview at the office of Immigration and Customs Enforcement (ICE), in San Jose, California, nor requested that the interview be rescheduled.

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) counsel's response to the director's request; (4) the director's notice of intent to deny (NOID); (5) the director's denial letter; and (6) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

On appeal, counsel states, in part:

The beneficiary did in fact appear for the interview and evidence was submitted to your office on January 24, 2007. The USCIS's own Case Status Online reflects this fact, showing a receipt date of January 25, 2007, which is within the response period allotted by the NOID that was issued in this case.

The record contains evidence that the petitioner's response to the director's NOID was received by Citizenship and Immigration Services (CIS) on January 25, 2007, which is within the time period specified on the notice. In view of the foregoing, the matter will be remanded for the director to consider the petitioner's response to the NOID in accordance with 8 C.F.R. 214.2(h)(10)(ii). The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision that, if adverse to the petitioner, is to be certified to the AAO for review.