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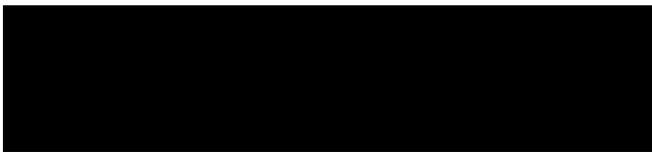
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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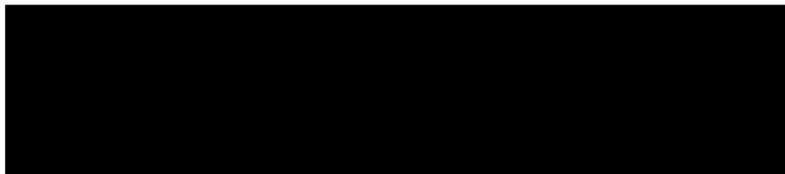


FILE: WAC 06 207 53016 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2008

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:



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 service center director 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 multimedia advertising agency. It seeks to employ the beneficiary as its vice president of operations and endeavors to classify him 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 a certified labor condition application (LCA) for the intended dates of employment was not obtained prior to the filing of the Form I-129 petition. On appeal, the petitioner states that it failed to obtain a properly certified LCA prior to filing the present petition (a continuation petition of previously approved employment), as it was unaware that a new LCA was required to continue the beneficiary's previously approved status. The petitioner obtained counsel to represent it subsequent to the filing of the petition.

The issue to be discussed in this proceeding is whether a certified LCA was obtained prior to the filing of the Form I-129 petition.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 101(a)(15)(H) of the Act defines an H-1B nonimmigrant as:

[A]n alien who is coming temporarily to the United States to perform services . . . in a specialty occupation . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary of Labor an application under section 212(a)(n)(1) . . . .

Title 8, Code of Federal Regulations, part 214.2(h)(4)(iii)(B)(1) provides that the petitioner shall submit with an H-1B petition "a certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary." The regulations further provide:

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 in the occupational specialty in which the alien(s) will be employed.

8 C.F.R. § 214.2(h)(4)(i)(B)(1).

As previously stated, this is an extension petition for continuation of previously approved employment without change, and with the same employer. The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(1) indicates that any request for extension must be accompanied by either a new or a 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 requested employment. The petitioner did not submit a copy of any previously certified LCA that was valid for the intended dates of employment (2/2/07 – 6/15/09).

Pursuant to 8 C.F.R. § 103.2(b)(12), "an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. . . ." The Form I-129 petition was filed on July 7, 2006. The petitioner had sought to file

the petition prior to the expiration of the beneficiary's H-1B status, but the petition was rejected because the petitioner submitted the wrong filing fee. A properly certified LCA for the beneficiary's intended work location was not submitted at the time of filing. The director then submitted a request for evidence (RFE) requesting, among other things, that the petitioner submit a properly certified LCA for intended dates of employment. In response to that request the petitioner submitted an LCA certified on February 2, 2007 (subsequent to filing of the Form I-129), for employment from February 2, 2007 – June 15, 2009. The petition must, accordingly, be denied because certification was not obtained prior to the filing of the H-1B 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 failed to sustain that burden.

**ORDER:** The appeal is dismissed. The petition is denied.