

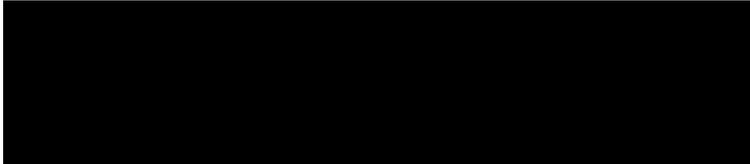
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U.S. Citizenship
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Services

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FILE: WAC 07 145 54322 Office: CALIFORNIA SERVICE CENTER Date: FEB 27 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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision based upon the entire record of proceedings, to include the response to the director's request for additional evidence (RFE) that the petitioner filed on October 9, 2007.

The petitioner describes itself as a technology company that provides comprehensive Oracle Application Systems and Support, Siebel CRM and Microsoft Business Solutions, and IT consulting services and support. In order to newly employ him in a position that the petitioner titles "Oracle Applications Technofunctional Consultant," the petitioner filed this H-1B petition 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).

On appeal, counsel contends that the director's decision is defective because it was issued prior to and without consideration of the petitioner's timely response to the director's RFE. As discussed below, the AAO finds that counsel's argument is persuasive in light of the relevant information in the record of proceedings. Accordingly, the petition will be remanded to the director to issue a new decision after consideration of the entire record of proceedings as presently constituted, to include all of the documents included in the RFE response filed by the petitioner with the service center on October 9, 2007.

The record of proceedings reveals the following salient facts. The director issued an RFE on July 17, 2007 that notified the petitioner that the period for filing a response ended on October 9, 2007. On October 3, 2007 the director issued her decision to deny the petition. According to the decision, the petitioner filed an incomplete response to the RFE - on a date not specified in the decision - which consisted of "[a] copy of the petitioner's website information." On October 9, 2007 - the final date for responding to the RFE - the petitioner filed a set of documents with the service center, introduced by a two-page cover letter from counsel that describes its attachments as the petitioner's response to the director's RFE. This submission exceeds the scope of the Internet printouts that the director's decision treated as the petitioner's RFE response. The record indicates that the director may have mistaken the Internet printouts as an incomplete response by the petitioner to the director's RFE. The evidence of record, however, does not establish a filing by the petitioner on October 3, 2007, as there are no mailing, shipment, or electronic transmission documents, no receipt stamps, and no corresponding receipt data entered into Citizenship and Immigration Services databases accompanying such documentation. Upon review, the weight of the evidence establishes that the petitioner filed its first RFE response on October 9, 2007.

The director's decision will be withdrawn, and the matter will be remanded for entry of a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The director should base her decision upon consideration of the entire record of proceedings, including all of the documents included in the RFE response filed by the petitioner with the service center on October 9, 2007. If adverse to the petitioner, the decision is to be certified to the AAO for review.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's October 3, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.