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U.S. Citizenship
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Services

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FILE: WAC 06 271 53862 Office: CALIFORNIA SERVICE CENTER Date: **FEB 28 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner operates an import/export business. It seeks to employ the beneficiary as an import/export manager. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 April 25, 2007, the director denied the petition determining that the petitioner had not complied with the requirements for filing a Form I-129, Petition for a Nonimmigrant Worker, as the petitioner had not submitted a certified Form ETA 9035, Labor Condition Application (LCA). On appeal, counsel for the petitioner asserts she inadvertently submitted an unsigned copy of the LCA with the petition and with the response to the director's request for further evidence (RFE). On appeal, counsel submits a copy of the LCA that was certified August 8, 2006. The certified copy submitted on appeal lists the same ETA case number as the ETA case number referenced in the initial petition.

The record of proceeding before the AAO contains: (1) the Form I-129 filed September 5, 2006 and supporting documentation; (2) the director's December 11, 2006 RFE; (3) counsel's March 4, 2007 response to the RFE and supporting documentation; (4) the director's April 25, 2007 denial decision; and (5) the Form I-290B, counsel's statement and a copy of the LCA certified on August 8, 2006 in support of the appeal. The AAO has considered the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner established filing eligibility at the time the Form I-129 was received by U.S. Citizenship and Immigration Services (CIS) on September 5, 2006.

The submission of the LCA certified prior to the filing date of the petition in this matter satisfies the general requirements for filing immigration applications and petitions as set forth at 8 C.F.R. §103.2(a)(1), at 8 C.F.R. § 103.2(b)(1), and at 8 C.F.R. § 214.2(h)(4)(i)(B). Accordingly, the director's decision as it relates to this issue is withdrawn.

The petition may not be approved, however, as the record does not establish that the proffered position qualifies as a specialty occupation. Thus, the petition will be remanded for the director to determine whether the proffered position qualifies as a specialty occupation. The director must afford the petitioner a reasonable opportunity to provide any further information on this issue and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's April 25, 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.