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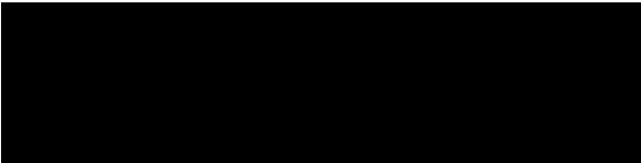
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: WAC 07 050 50567 Office: CALIFORNIA SERVICE CENTER Date: **FEB 29 2008**

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:

SELF-REPRESENTED

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.

*for*  
*Michael T. Kelly*  
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 appeal will be dismissed. The petition will be denied.

The petitioner is a direct marketing company that seeks to extend its authorization to employ the beneficiary as a computer services director from March 1, 2007 to March 1, 2008. 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 petitioner had not submitted a certified labor condition application (LCA) covering the time period of the requested employment. The director also found that information on the LCA pertaining to the beneficiary's annual compensation was inconsistent with information that is reflected on the petition.

On appeal, the petitioner states, in part, that the Department of Labor's (DOL) website indicates that Citizenship and Immigration Services (CIS) must give a one-year extension to the beneficiary because his application for permanent labor certification is backlogged at the DOL. He also states that the amount of the petitioner's wage exceeds the prevailing wage quoted six years ago, as required by the DOL. The petitioner submits a copy of the Foreign Labor Employment Certification filed on behalf of the beneficiary, with a priority date of August 11, 2003.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's notice of intent to deny (NOID); (3) the petitioner's response to the NOID; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's brief. The AAO reviewed the record in its entirety before reaching its decision.

The record contains the following:

- An LCA for an H-1 nonimmigrant certified on November 27, 2000, and valid from March 1, 2001 through March 1, 2007; and
- A Foreign Labor Employment Certification filed on behalf of the beneficiary with a priority date of August 11, 2003.

The petitioner's assertion on appeal that CIS must give a one-year extension to the beneficiary because his application for permanent labor certification is backlogged at the DOL (referring to the benefits provided for in sections 104(c) or 106 of the American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313, 114 Stat. 1251 (2000) (AC21), as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002) (DOJ 21)), is noted. The petitioner, however, is not exempt from the LCA requirements, as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(B).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation. . . .

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(1) provides that the request for extension must be accompanied by either a new or photocopy of the prior certification from the DOL that the petitioner continues to have on file an LCA valid for the period of time requested for the extension.

As discussed above, the director denied the petition because the petitioner had not submitted a certified LCA covering the time period of the requested employment. Since this has not occurred, the petition may not be approved. No evidence of record indicates that the petitioner continues to have on file an LCA valid for the period of requested employment.

Beyond the decision of the director, the petitioner has also failed to establish that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. The record contains insufficient evidence to establish either of these issues. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary is qualified to perform the duties of a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). For these additional reasons, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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