

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

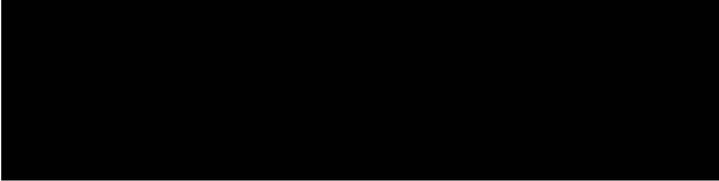
**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services

*D2*



FILE: EAC 06 011 51873 Office: VERMONT SERVICE CENTER Date: **MAR 03 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. Healy*  
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 sustained. The petition will be approved.

The petitioner is a general hospital with teaching and research facilities affiliated with Harvard University. It seeks to employ the beneficiary as a research fellow in the Molecular Pathology Unit of the Department of Pathology at the Harvard Medical School in Charlestown, Massachusetts. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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's labor condition application that was submitted in response to the director's RFE, with the work location correctly listed as "Boston, MA," was not certified by the Department of Labor (DOL) prior to filing the petition, as required by 8 C.F.R. § 214.2(h)(4)(iii)(B).

On appeal, the petitioner states, in part, as follows:

We request that the AAO consider the LCA error to be sufficiently minor in nature to not rise to the level of making the H-1B petition not approvable. . . . The inadvertent listing of LA, when the job site was MA when all other elements of the LCA were properly executed does not destroy eligibility for the benefit requested. Further, the LCA was consistent with all information submitted on Form I-129 and the employer information provided accompanying the H-1B petition.

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 LCA submitted at the time of filing was certified on October 12, 2005, prior to the petition's October 13, 2005 filing date, and lists the work location as "Boston, LA." The LCA submitted in response to the director's RFE was certified on June 22, 2006, subsequent to the petition's October 13, 2005 filing date, and correctly lists the work location as "Boston, MA." The evidence of record, including the letters of support submitted at the time of the petition's filing, and the letters submitted in response to the director's RFE and on appeal, indicates that the beneficiary will work in the Molecular Pathology Unit of the Department of Pathology at the Harvard Medical School in Charlestown/Boston, Massachusetts. In the petitioner's March 7, 2007 letter submitted in response to the director's RFE, the petitioner's director stated, in part, as follows: "This error is the result of scrolling instead of paging down on the computer as the pull-down menu on the LCA screen lists LA right before MA." Upon review of the record in its entirety, the petitioner has sufficiently clarified the inconsistency

pertaining to the work location listed on the LCA submitted at the time of filing, and thus has overcome the objection of the director.

In this case, the proffered position is that of a research fellow in the Molecular Pathology Unit of the Department of Pathology at the Harvard Medical School in Charlestown, Massachusetts. A review of the Department of Labor's *Occupational Outlook Handbook*, 2006-07 edition, under the category of Medical Scientists, finds that a Ph.D. degree in biological science is the minimum education required for most prospective medical scientists, except epidemiologists, because the work of medical scientists is almost entirely research oriented. Therefore, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner states that the beneficiary is eligible for the proffered position because he holds a Ph.D. in Molecular Genetics from Fudan University in the People's Republic of China. The record contains the following: a copy of the beneficiary's a foreign Ph.D. degree; a copy of the beneficiary's J-1 visa with Mount Sinai School of Medicine of New York City listed as the program sponsor; a copy of the H-1B approval notice filed by Massachusetts Institute of Technology (MIT) on behalf of the beneficiary; and a copy of the beneficiary's statement of earnings and deductions from MIT. The record also contains a letter from an assistant pathologist from the petitioning entity who states, in part, that the beneficiary is eligible for the proffered position because he holds a Ph.D. in Molecular Genetics from Fudan University in the People's Republic of China, and has post-doctoral training from the Mount Sinai School of Medicine of New York City and from MIT. The writer also states as follows: "[The beneficiary's] doctoral work has led to a number of publications and his work as a post-doctoral associate MIT has been presented at the American Association for Cancer Research annual meeting and forms the basis for a manuscript currently in preparation. [The beneficiary] has a broad range of experience in techniques of molecular biology, biochemistry, protein purification, and analytical chemistry." In view of the foregoing, the evidence of record establishes that the beneficiary is qualified for the proffered position, in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained, and the petition is approved.