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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 147 50995 Office: CALIFORNIA SERVICE CENTER Date: OCT 01 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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's August 24, 2007 decision will be withdrawn and the matter remanded so that the director may properly reject the petition and return the fee.

The petitioner is a computer programming and software development company that seeks to employ the beneficiary as a programmer analyst. 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 2008 fiscal-year cap for the issuance of H-1B visas, set by section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A), was reached on April 1, 2007. The petitioner initially filed the Form I-129 petition on April 2, 2007; however the check accompanying the petition was dishonored and returned by the petitioner's bank. On May 30, 2007, Citizenship and Immigration Services (CIS) received payment for the petitioner's dishonored check and updated the filing/receipt date to May 30, 2007. May 30, 2007 is after the date CIS accepted new H-1B petitions.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office. In this matter, as the petition filed April 2, 2007 was not accompanied by the correct fee, the date of filing is the date that CIS received payment for filing the petition. CIS records indicate this date is May 30, 2007.

On appeal, the petitioner observes that CIS informed the petitioner that its check had been returned and a request for payment made on an invoice dated May 11, 2007 that reflected a due date of May 25, 2007. The petitioner provides evidence that it submitted a cashier's check that was received by CIS on May 24, 2007. The petitioner also notes that it sent other cashier's checks on the same day for other beneficiaries. The petitioner requested that the petition be approved based on these reasons.

The AAO bases its decision upon consideration of all of the evidence in the record of proceeding, including: (1) the petitioner's Form I-129 (Petition for Nonimmigrant Worker) submitted April 2, 2007 and filed on May 30, 2007 and the supporting documentation filed with it; (2) the director's August 24, 2007 denial letter; and (3) the Form I-290B, and supporting letter.

Preliminarily, the AAO observes that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The records concerning filings made by the petitioner on behalf of other beneficiaries is not before the AAO, is not relevant to the director's decision in this matter, and does not establish timely submission in this matter.

As May 30, 2007 is the date of filing the completed petition, properly signed, executed, and accompanied by the correct fee, and this date is after CIS had ceased accepting new H-1B petitions, the petition must be rejected

pursuant to 8 C.F.R. § 214.2(h)(8)(ii)(D). Thus, the director's August 24, 2007 denial decision will be withdrawn and the matter remanded to the director to reject the petition and return the fee.

ORDER: The director's August 24, 2007 denial decision is withdrawn and the matter remanded to the director to reject the petition and return the fee.