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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

File: EAC 02 094 52059 Office: VERMONT SERVICE CENTER Date: JAN 22 2004

IN RE: Petitioner: [redacted]
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.

Robert P. Wiemann, Director
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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a hospital that seeks to extend the status of the beneficiary as a medical resident. The petitioner 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 petitioner claimed exemption based on its nonprofit status and being related to or affiliated with an institution of higher education. The director denied the petition stating that there was no evidence that the hospital is related to or affiliated with any college or university. On appeal, the petitioner submits a brief.

In the petitioner's response to the director's March 21, 2002 letter stating his intent to deny the petition for the above-stated reasons, the petitioner submitted a copy of the affiliation agreement between it and Yale University School of Medicine. The petitioner established that it is affiliated with a university and that it qualified for an exemption; however, the director still denied the petition based on the lack of evidence of affiliation. That decision shall be withdrawn.

Because the director did not make any determination on the merits of the petition, the matter is now remanded to the director to do so.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issues of whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform such an occupation, 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 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 August 14, 2002 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.