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U.S. Citizenship
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Services

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[redacted]

JAN 28 2005

FILE: WAC 03 217 50163 Office: CALIFORNIA SERVICE CENTER Date:

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:

[redacted]

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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner filed a Form I-129 petition with Citizenship and Immigration Services (CIS) on July 21, 2003. Submitted with that petition was a certified Labor Condition Application (LCA) valid from June 9, 2003 until April 29, 2006. The LCA listed the petitioner as the employer and was certified for the job title of architect. The LCA further noted that it covered 100 H-1B nonimmigrants. On August 1, 2003, the director submitted a request for evidence (RFE) asking, in part, that the petitioner submit a detailed list of all file numbers for beneficiaries who have been approved using the aforementioned LCA. On October 20, 2003, the petitioner responded to the RFE stating, in part, that an amended LCA was attached (certified August 25, 2003) amending the previous LCA, and indicating that the LCA covered only one nonimmigrant rather than 100 as stated on the first LCA certified June 9, 2003. On November 5, 2003, the director denied the petition stating that the second LCA submitted was certified subsequent to the filing of the Form I-129 petition. On appeal, the petitioner states that the initial LCA (certified June 9, 2003) was intended only for the beneficiary, that it had not been used by any other nonimmigrant, that it would be used only by the beneficiary, and that the designation contained thereon referring to 100 nonimmigrants was an administrative error. The subsequent filing of a new LCA was intended only to correct the administrative error.

The statements submitted by the petitioner on appeal have overcome the reasons for director's denial of the Form I-129 petition. The LCA filed with the petition was certified on June 9, 2003, prior to the filing of the petition. The fact that it was certified for 100 nonimmigrant architects does not invalidate the LCA. The director rightfully requested information from the petitioner as to a listing of all beneficiaries who had used the LCA. The petitioner has responded indicating that no other alien had used the LCA. As such, the LCA dated June 9, 2003 remains valid for the present petition.

This matter is remanded to the director to issue a new decision determining whether the proffered position qualifies as a specialty occupation, and if so, whether the beneficiary is qualified to perform the duties of a specialty occupation. The director may request such additional evidence as he deems necessary in rendering his decision.

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 decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion, which if adverse to the petitioner is to be certified to the AAO for review.