

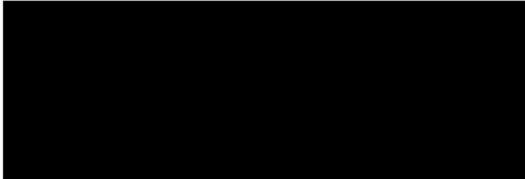
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Di

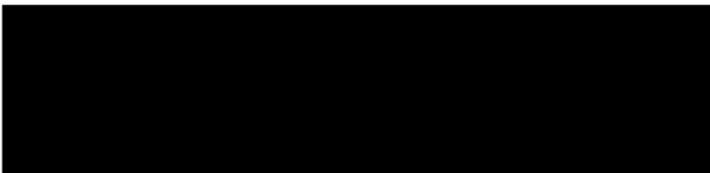


FILE: WAC 05 080 51329 Office: CALIFORNIA SERVICE CENTER Date: OCT 30 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

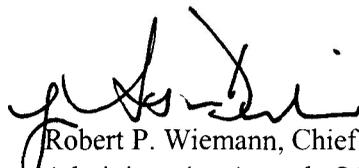
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: On February 14, 2005, the petitioner filed Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to employ the beneficiary as a business/clinic administrator 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, California Service Center, denied the nonimmigrant visa petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on May 31, 2007. Subsequently, the petitioner filed a complaint for declaratory judgment in the U.S. District Court for the Central District of California. *Liberty Dental Group, Inc.; Ghazaleh Shahriari-Ahmadi; Hossein Daei v. Michael Chertoff, et al.*, CV07-06549 (October 9, 2007). Upon review, the AAO, on its own motion, reopened the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii). Prior to making this decision, the AAO issued a request for further evidence (RFE) on May 15, 2008 and accorded the petitioner twelve weeks to provide its response. As of this date, the petitioner has not provided a response to the AAO's RFE. The petition will be summarily denied as abandoned and as based on the record. 8 C.F.R. § 103.2(b)(13).

The petitioner has not provided the requested evidence establishing that the proffered position is a specialty occupation and has not submitted the requested evidence establishing that the beneficiary is qualified to perform the duties of a specialty occupation. Thus, the petition is denied as abandoned. Further, based on the record including the deficiencies and inconsistencies noted in the AAO's RFE dated May 15, 2008, the petition is denied based on the record. The petitioner has not established that the proffered position is a specialty occupation and has not established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO affirms its May 31, 2007 decision.

The petition will be denied. As always, 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 not met that burden.

ORDER: The AAO's May 31, 2007 decision is affirmed and the petition is denied.