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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 04 194 52232 Office: TEXAS SERVICE CENTER Date: MAR 18 2005

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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The petition will be denied.

The petitioner, a company specializing in construction truss manufacturing, seeks to continue to employ the beneficiary as a truss engineer/designer, in accordance with a previously approved petition to employ the beneficiary as an H-1B nonimmigrant worker in a specialty occupation 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). In order to continue this employment, the petitioner endeavors to continue the beneficiary's H-1B classification and extend his stay.

The director denied the petition on the basis that the petitioner had failed to file a certified labor condition application for H-1B Nonimmigrants (Form ETA 9035) (LCA) for the period of proposed employment, as required by Citizenship and Immigration Service (CIS) regulations.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states:

> Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that with the petition an H-1B petitioner shall submit "[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary."

The regulation at 8 C.F.R. § 214.2(h)(15)(i) states, in pertinent part:

> *General.* The petitioner shall apply for extension of an alien's stay in the United States by filing a petition extension on Form I-129 accompanied by the documents described for the particular classification in paragraph (h)(15)(ii) of this section. . . .

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(*1*) states that a request for an H-1B extension of stay "must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor that the petitioner continues to have on file a labor condition application valid for the period of time requested for the occupation."

The record reflects that the previous petition was approved for the period May 23, 2002 to July 31, 2004, accompanied by an LCA certified for the period October 30, 2001 through July 31, 2004. The present petition, filed on July 7, 2004, specified August 1, 2004 to July 31, 2007 as the period for which the petitioner intended to continue the beneficiary's employment. The director denied the petition because the LCA that the petitioner submitted - the LCA that had been filed with the earlier, approved petition - had not been certified for that period of proposed employment.

On appeal, the petitioner indicates that it had made an honest mistake and acted in good faith, and it requests that the AAO accept an LCA that was certified for the period of proposed employment, but after the petition was filed. The petitioner cites no errors by the director.

CIS regulations have no provision for discretionary relief from the LCA requirements. Therefore, the submission of the second LCA creates no basis for overturning the director's decision.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

As the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition, and as the petitioner presents no additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.