

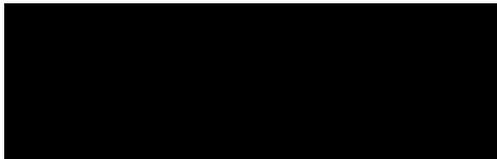
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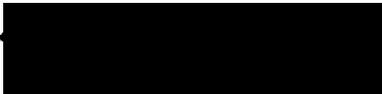


Office: CALIFORNIA SERVICE CENTER

Date: MAY 18 2005

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.

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 sustained. The petition will be approved.

The petitioner is a provider of mixed signal semiconductors, and SW, HW, and systems solutions. It seeks to continue employing the beneficiary as a senior image processing engineer 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 her stay.

The director denied the petition on the basis that the petitioner had changed without explanation the beneficiary's work location from Fremont, California (which is indicated in the company's employment letter and the Form I-129 petition) to Scotts Valley, California. Because of this, the director could not determine whether the certified labor condition application (Form ETA 9035), which lists Scotts Valley, California, as the beneficiary's work location, reflects the accurate place of employment, as required by Citizenship and Immigration Service (CIS) regulations. On appeal, the petitioner states that the company's letter and the Form I-129 petition inadvertently show Fremont, California, as the beneficiary's work location. The beneficiary, the petitioner states, will be located at the Scotts Valley office, and the petitioner submits evidence of a lease agreement entered into on December 16, 2003 for a building located in Scotts Valley, California.

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 (DOL) 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 present petition was filed on January 14, 2004; that the Form ETA 9035 the petitioner submitted had been certified by the DOL on January 12, 2004, showing Scotts Valley, California, as the place of intended employment; and that the petitioner's January 23, 2004 letter submitted in response to the request for evidence stated that the beneficiary "will be working in our Scotts Valley, CA location"; however, the letter did not explain why the H-1B petition and company letter dated January 8, 2004 indicate that the beneficiary will be placed at Fremont, California.

On appeal the petitioner states that the company's letter and the H-1B petition inadvertently show Fremont, California, as the beneficiary's work location. The beneficiary, the petitioner states, will be located at the Scotts Valley office, and a lease agreement entered into on December 16, 2003 for a building located in Scotts Valley, California, is submitted to confirm this. In light of these facts, the AAO accepts the petitioner's explanation regarding the beneficiary's work location, which will be Scotts Valley, California. Accordingly, the petitioner complied with the regulatory requirement for filing with the H-1B petition an LCA certified for the beneficiary's intended work location, Scotts Valley, California.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.