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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

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FILE: EAC 04 073 53293 Office: VERMONT SERVICE CENTER Date: OCT 04 2005

IN RE: Petitioner:
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: 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 acting director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a business providing integrated information technology services, with 2,300 employees. It seeks to employ the beneficiary as a software engineer 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 denied the petition because the petitioner failed to submit all of the requested evidence, specifically a certified Labor Condition Application (LCA) from the Department of Labor covering the period of employment identified in the Form I-129, Petition for a Nonimmigrant Worker.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request; (4) the director's February 10, 2004 denial of the petition; and (5) Form I-290B, with a certified LCA covering the period of intended employment.

The issue before the AAO is whether the petitioner's submission of a certified LCA on appeal overcomes the basis for the director's denial of the petition.

The petitioner filed the instant Form I-129 with Citizenship and Immigration Services (CIS) on January 20, 2004, without the certified LCA (Form ETA 9035) required by regulation. *See* 8 C.F.R. § 214.2(h)(i)(B). The petitioner also failed to submit the LCA in response to the director's January 29, 2004 request for evidence, which specifically asked the petitioner for this document. Accordingly, the director denied the petition. *See* 8 C.F.R. §§ 103.2(b)(11) and (14). The petitioner now seeks to supplement the record by submitting a certified LCA.

The AAO will not, however, accept the LCA submitted by the petitioner. When, as here, a petitioner has been put on notice of a deficiency in the record and has been given an opportunity to provide evidence to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal for any purpose. S*ee Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena,* 19 I&N Dec. 533 (BIA 1988).

Further, the AAO finds that the certified LCA submitted by the petitioner, even if accepted as evidence, would not satisfy Form I-129 filing requirements.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) as follows:

> [E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission . . . .

Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1):

> An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form . . . .

As previously noted, regulations governing the filing of H-1B petitions require a petitioner to obtain a certified LCA prior to submitting the Form I-129. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a LCA with the Department of Labor when submitting the Form I-129.

However, the LCA the petitioner submits on appeal was certified on February 10, 2004, several weeks subsequent to its filing of the Form I-129 on behalf of the beneficiary. As a result, the LCA does not satisfy the filing requirements just discussed. A petitioner must establish eligibility at the time of filing a nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

For the reasons already discussed, the petitioner's submission of a certified LCA on appeal does not overcome the basis for the director's denial. Accordingly, the AAO shall not disturb the director's denial of the petition.

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