U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: WAC 07 041 50489 Office: CALIFORNIA SERVICE CENTER Date: AUG 18 2

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, Chief
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 dismissed. The petition will be denied.

The petitioner is a medical laboratory[1] that seeks to extend its authorization to employ the beneficiary as a laboratory technologist from January 1, 2007 to December 31, 2007. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation 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 determined that the petitioner did not provide evidence of an approved labor condition application (LCA) valid for the period of time requested for the extension and denied the petition.

Internet information cited in footnote 1 indicates that the petitioner's business status is suspended. The AAO sent a fax to counsel on June 2, 2008, requesting evidence that the petitioner is operating as a legal entity, and as a courtesy, providing him with five days to respond. However, counsel did not respond and no further documents have been received by the AAO to date. Thus, the record is considered complete.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's statement. The AAO reviewed the record in its entirety before reaching its decision.

On appeal, counsel asserts that the director denied the petition in error, as the information in the decision pertains to another petitioner and beneficiary. Counsel also states that prior to the filing of the instant petition, the petitioner filed a second LCA, which was not returned by the certifying authority in time for inclusion in the I-129 package. As supporting documentation, counsel submits: a copy of the previously submitted electronic filing of the petitioner's LCA for a period of employment from September 27, 2006 through December 30, 2007; an LCA certified on October 2, 2003, valid from January 2, 2004 through January 2, 2007; a copy of counsel's previously submitted letter, dated November 15, 2006, indicating that a new LCA was filed electronically on September 27, 2006; and a copy of an uncertified LCA, for a period of employment from January 1, 2007 through January 1, 2008.

The AAO notes counsel's assertion that the director denied the petition in error, as the information in the decision pertains to another petitioner and beneficiary. The AAO disagrees. Although another petitioner and job title are inadvertently mentioned in the second paragraph on the second page, a thorough review of the director's decision finds that she properly considered the LCA issues pertaining to Southern California Reference Laboratory. In addition, the dates mentioned on the third page of the director's decision correctly pertain to the filing date of the instant petition and the date of the director's RFE. Upon review of the director's entire decision, it is clear that the director properly considered the issues of the instant petition.

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[1] The California Business Portal website at http://kepler.ss.ca.gov/corpdata/ reports the petitioner's status as "suspended." In view of the foregoing, it is not clear that the petitioner is an active company.

Counsel's electronic filing of the petitioner's LCA for the period of time requested for the extension is also noted. The petitioner, however, is not exempt from the LCA requirements, as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(B).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

3. Evidence that the alien qualifies to perform services in the specialty occupation. . .

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(*1*) provides that the request for extension must be accompanied by either a new or photocopy of the prior certification from the DOL that the petitioner continues to have on file an LCA valid for the period of time requested for the extension.

As discussed above, the director denied the petition because the petitioner had not submitted a certified LCA covering the time period of the requested employment. Since this has not occurred, the petition may not be approved. No evidence of record indicates that the petitioner continues to have on file an LCA valid for the period of requested employment.

Beyond the decision of the director, the petitioner has also failed to establish that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. The record contains insufficient evidence to establish either of these issues. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary is qualified to perform the duties of a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). For these additional reasons, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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