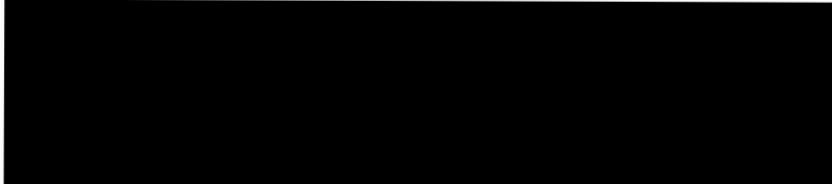


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FILE: EAC 05 224 54307 Office: VERMONT SERVICE CENTER Date: MAR 31 2008

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.

Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a wedding consultant and planner that seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, endeavors to extend the beneficiary's nonimmigrant classification as a 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, initially submitted on August 11, 2005; (2) the director's August 24, 2005 request for additional evidence; (3) counsel's November 14, 2005 response to the director's request; (4) the director's December 1, 2005 denial letter; (5) the Form I-290B and supporting documentation, received on December 19, 2005;¹ (6) the AAO's April 26, 2007 remand of the petition to the director; (7) the director's June 21, 2007 request for additional evidence; (8) the petitioner's August 25, 2007 response to the director's request;² and (9) the director's January 23, 2008 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

In its April 26, 2007 decision, the AAO determined that, although the proposed position qualifies for classification as a specialty occupation, the record does not establish that the beneficiary is qualified to perform the duties of the specialty occupation, or that the record contains a labor condition application certified prior to the filing date of the petition. Accordingly, the AAO remanded the matter to the director for his determination of whether the beneficiary is qualified to perform the duties of the specialty occupation, or that the petitioner obtained a certified LCA prior to filing the petition, with certification to the AAO should his decision be adverse to the petitioner.

In his June 21, 2007 request for additional evidence, the director afforded the petitioner 84 days to submit evidence regarding the beneficiary's qualifications to perform the duties of the specialty occupation, and that it had obtained a certified LCA prior to filing the petition. In response, the petitioner resubmitted the October 22, 2001 evaluation of work experience, prepared by the Global Education Group, Inc. (Global), which the AAO had previously found defective. With regard to the late-filed and submitted LCA, the petitioner stated that its failure to procure a certified LCA prior to filing the petition was due to clerical error.

¹ Counsel's submission on appeal also included evidence from the petitioner's initial H-1B filing, including: (1) previous counsel's June 21, 2002 response to the director's request for additional evidence; (2) the director's July 3, 2002 denial of the petition; (3) previous counsel's August 5, 2002 Form I-290B and accompanying appellate brief; (4) the AAO's November 12, 2003 dismissal of the appeal; (5) previous counsel's motion to reconsider and the petitioner's December 11, 2003 letter accompanying the motion to reconsider; and (6) the AAO's April 25, 2005 remand of the petition to the director, in which the AAO found the proposed position a specialty occupation, but remanded the decision for a determination on the beneficiary's qualifications to perform the duties of the position. The initial petition was approved on June 13, 2005; its period of validity was December 3, 2001 through December 3, 2004.

² The AAO notes that, in its August 25, 2007 response to the director's June 21, 2007 request for additional evidence, the petitioner stated that it wished to discontinue the services of counsel as its attorney. However, and as noted by the director, this request may not be honored, as the petitioner did not sign the letter. Accordingly, counsel will be notified of this proceeding.

For the same reasons cited by the AAO in its April 26, 2007 remand, the director found the Globe evaluation defective. Both the director's and the AAO's reasoning are now part of the record and need not be repeated here. The director also noted, as did the AAO in its remand, that the petitioner's failure to procure a certified LCA prior to filing the H-1B petition precluded the petition's approval. As noted previously, there is no provision in the regulations for discretionary relief from the LCA requirements.

The petitioner has chosen not to respond to the director's notice of certification. As the petitioner has not responded to the director's notice of certification, and its submission in response to the director's June 21, 2007 request for additional evidence was deficient, it has not established that the beneficiary is qualified to perform the duties of the specialty occupation, or that the record contains an LCA for the proposed position that was certified prior to the filing date of the petition. Therefore, the director's decision will be affirmed. The petition will be denied.

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 sustained that burden.

ORDER: The director's January 23, 2008 decision is affirmed. The petition is denied.