U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 2 2 2013 OFFICE: CALIFORNIA SERVICE CENTER

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. Upon review, the decision of the director will be withdrawn. The petition will be approved.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a law firm with 2,796 employees. It seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the grounds that the petitioner failed to establish that the beneficiary possesses the requisite license to perform the duties of an attorney in the State of California.

In the letter dated March 22, 2013, the petitioner indicated that "[o]nce the beneficiary has been admitted to the California Bar, he will assume the position of Associate, which entails the activities described [in the petition], plus the ability to sign his name to Firm letterhead as an attorney and to render legal advice to clients." The AAO observes that, while the beneficiary was not licensed to practice law in California at the time the instant petition was filed, he is now an "active" member of the State Bar of California, and "may practice law in California." *See* State Bar of California, available on the Internet at (last visited August 21, 2013).[1]

The AAO further notes that the period of intended employment, as requested on the Form I-129, commences on October 1, 2013. As the beneficiary is now a member of the California Bar, it is clear based on the statements made in the March 22, 2013 letter that the petitioner would only employ him as a lawyer from the start date requested in the petition. This is further supported by the fact that the submitted Labor Condition Application (LCA) has been certified for a lawyer position at the permanent worksite and for the employment period requested in the Form I-129. No other LCAs were provided in support of the petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(v)(A) states that where a state or local license is required for an individual to fully perform the duties of the occupation, the alien "must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation." The director correctly noted in the denial that active membership in the California Bar is required to practice law in that state. *See* Cal. Bus. & Prof. Code § 6125 (West 2003). As the petitioner intends to employ the beneficiary as an attorney in the State of California, a license is therefore required prior to the approval of the instant H-1B petition.

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[1] It is noted that the beneficiary was admitted to the California Bar on June 4, 2013 and that the appeal was filed on June 19, 2013. Inexplicably, this evidence of the beneficiary's admission to the California Bar was not submitted on appeal by either the petitioner or its counsel. Instead, this evidence was obtained by the AAO on its own volition, incorporated into the record of proceeding, and considered on appeal. As this decision is not adverse and as this evidence was neither derogatory nor presumably unknown to the petitioner, no prior notice of its incorporation into this record is required by 8 C.F.R. § 103.2(b)(16)(i).

It is further noted that, while the regulatory provision at 8 C.F.R. § 103.2(b)(1) generally requires that eligibility be established "at the time of filing," 8 C.F.R. § 214.2(h)(4)(v)(A) provides an exception for the H-1B licensing requirement that permits petitioners to establish a beneficiary's licensing eligibility "prior to approval" of a petition.

While the director did not err in denying the petition based on the evidence of record at that time, the AAO finds, as indicated above, that the beneficiary has since obtained the requisite license prior to approval of the H-1B petition and is qualified to immediately engage in employment as an attorney on the first day of the requested validity period of the visa petition.

Accordingly and upon review of the entire record, the AAO finds that, on appeal, the director's sole ground for denying this petition has been overcome. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The evidence in this particular record of proceeding now establishes that the beneficiary is currently qualified to perform the duties of the proffered position of attorney. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*).

ORDER: The appeal is sustained. The director's May 20, 2013 decision is withdrawn, and the petition is approved.