

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

41

PUBLIC COPY



FILE: EAC 05 176 52938 Office: VERMONT SERVICE CENTER Date: APR 26 2006

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:

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.

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

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petitioner will be denied.

The petitioner is a software product development and consulting company that seeks to extend the employment of the beneficiary as a programmer analyst. The petitioner 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 petitioner requested a seventh-year extension for the beneficiary under the American Competitiveness in the Twenty-First Century Act (AC21). The director denied the petition on the basis that the evidence of record did not establish that the beneficiary had maintained H-1B nonimmigrant status. Additionally, the director determined that the evidence of record did not establish that the beneficiary is eligible for an extension of stay beyond six years under the provisions of section 104(c) or 106 of AC21.

The petitioner submitted a timely Form I-290B on July 15, 2005 with an attached letter. Therefore, the record is complete.

On April 5, 2006, the Acting Director of Service Center Operations, Citizenship and Immigration Services (CIS), issued an interoffice memorandum that lists the petitioner as an organization that, pursuant to 20 C.F.R. § 655.855(d), the Department of Labor has identified to CIS as having violated the Act.¹ Accordingly, the memorandum directs that, pursuant to section 212(n)(2)(C)(ii) of the Act, 8 U.S.C. § 1182(n)(2)(C)(ii), no petition may be approved for this petitioner for the period August 1, 2005 to July 31, 2006. Accordingly, the appeal is dismissed, and the petition is denied.

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

¹ Interoffice Memorandum from Steve Bucher, Acting Director of Service Center Operations, *Organizations Ineligible for Approval of Immigrant and Nonimmigrant Petitions Under Section 212(n)(2)(C)(ii) of the Act*, HQCIS 70/6.2.8 (April 5, 2006).