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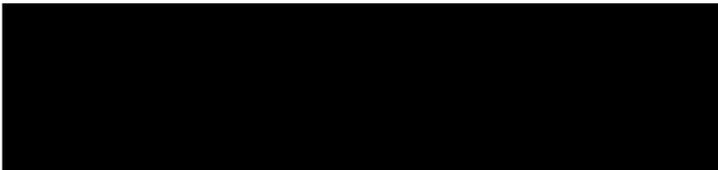
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

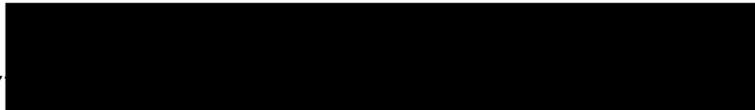
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**PUBLIC COPY**



FILE: WAC 05 014 52259 Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2006

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:

SELF-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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The director of the California 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 civil engineering, land survey company. The petitioner seeks to employ the beneficiary as a civil engineer, and 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 denied the petition because the petitioner failed to meet the requirements for filing a Form I-129, Petition for a Nonimmigrant Worker (Form I-129).

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) documentation submitted in response to the director's request; and (4) Form I-290B, Notice of Appeal to the Administrative Appeals Office (Form I-290B). The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner established filing eligibility at the time the Form I-129 was received by U.S. Citizenship and Immigration Services (CIS).

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1), and provide in pertinent part that:

[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), which states:

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 . . . .

In cases where evidence related to filing eligibility is provided in response to a director's request for evidence, 8 C.F.R. § 103.2(b)(12) states:

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed . . . .

The regulation requires that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner must obtain a certified labor condition application (LCA) from the Department of Labor (DOL) in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B).<sup>1</sup>

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<sup>1</sup> Pursuant to 8 C.F.R. § 214.2(h)(4)(i)(B), before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

In the instant case, the petitioner filed its Form I-129 with CIS on October 13, 2004. The petitioner did not file an LCA certified by the Department of Labor (DOL) at that time. In response to the director's request for evidence of a certified LCA, the petitioner provided a copy of its DOL-certified LCA. The LCA was certified on February 2, 2005, more than three months after the petitioner filed Form I-129 with CIS. Accordingly, the record establishes that at the time of filing, the petitioner had not obtained a certified LCA in the occupational specialty and, therefore, as indicated by the director, the petitioner failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B).

On appeal, the petitioner asserts that it filed its LCA with DOL prior to filing its Form I-129 with CIS. The petitioner asserts that, although it had not yet received DOL certification, it filed its Form I-129 with CIS based on the assumption that its LCA would be quickly approved and certified. On this basis, the petitioner believes that Form I-129 filing requirements have been met. The AAO is unpersuaded by the petitioner's assertions.

The Form I-129 filing requirements imposed by regulation clearly states that the petitioner must submit evidence of a certified LCA at the time of filing. A petitioner must establish eligibility at the time of filing the 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). In the present matter, the petitioner failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B). The beneficiary is thus ineligible for classification as an alien employed in a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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