

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D
1



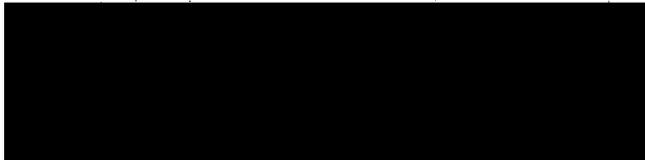
FILE: WAC 04 127 51882 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2007

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:

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 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 her decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a computer store that seeks to employ the beneficiary as a software engineer. The petitioner, therefore, 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 (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; (2) the director's June 3, 2004 request for additional evidence; (3) counsel's August 4, 2004 response to the director's request; (4) the director's August 24, 2004 denial letter; (5) the Form I-290B and supporting documentation, dated September 7, 2004; (6) the AAO's January 27, 2006 remand of the petition to the director; (7) the director's November 7, 2006 request for additional evidence; and (8) the director's March 1, 2007 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

In its January 27, 2006 decision, the AAO determined that, although the proposed position qualifies for classification as a specialty occupation, the petitioner had not established that the beneficiary qualifies to perform the duties of the specialty occupation. Accordingly, the AAO remanded the matter to the director for her determination of the beneficiary's qualifications, with certification to the AAO should the director's decision be adverse to the petitioner.

The director's November 7, 2006 request for additional evidence afforded the petitioner 84 days to submit evidence regarding the beneficiary's qualifications to perform the duties of the proposed position. However, the petitioner did not respond. Accordingly, the director found the beneficiary to lack the qualifications necessary to perform the duties of the specialty occupation, and certified her decision to the AAO for review. The contents of these documents are part of the record and their contents need not be repeated here.

As the petitioner chose not to respond to the director's request for additional evidence or submit evidence to the AAO to rebut the findings of the director's notice of certification, it has not established that the beneficiary qualifies to perform the duties of the proposed position under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C). Therefore, the director's decision will be affirmed.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C). Accordingly, the AAO will not disturb the director's denial of the petition.

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 March 1, 2007 decision is affirmed. The petition is denied.