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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

b1

[redacted]

FILE: WAC 07 010 51791 Office: CALIFORNIA SERVICE CENTER Date: JAN 04 2008

IN RE: Petitioner:
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:

[redacted]

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

The petitioner[1] is a computer training school that seeks to extend its authorization to employ the beneficiary as a computer instructor – information systems. The petitioner, therefore, 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's labor condition application (LCA) was certified by the Department of Labor (DOL) after the filing of the petition.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's notice of intent to deny (NOID); (3) counsel's response to the NOID; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

3. Evidence that the alien qualifies to perform services in the specialty occupation. . . .

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(*1*) provides that the request for extension must be accompanied by either a new or photocopy of the prior certification from the DOL that the petitioner continues to have on file an LCA valid for the period of time requested for the extension.

As discussed above, the director denied the petition because the petitioner's LCA was certified by the DOL after the filing of the petition.

On appeal, counsel states, in part, as follows:

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[1] A search of the CyberDriveIllinois website at http://www.ilsos.gov/corporatellc/CorporateLlcController on December 10, 2007 finds the status of the petitioner's business as "not good standing." In view of the foregoing, the petitioner's status as a U.S. employer is in question.

> The reason that [the] LCA was not enclosed with the original I-129 petition is due to the technical problems of [the] LCA System when the case was filed. With this letter, I enclosed communications between legal counsel and USDOL.

Counsel's comments and additional information are noted. Nevertheless, the petitioner's LCA was certified on October 16, 2006, a date subsequent to October 10, 2006, the filing date of the visa petition. The Form I-797, Notice of Action, reflects that the beneficiary's H-1B was valid until November 17, 2006. The petitioner, therefore, should have obtained the certification from the DOL prior to filing the instant petition. Regulations at 8 C.F.R. § 214.2(h)(4)(i)(B)(*1*) provide that *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. (Emphasis added.) Since this has not occurred, the petition may not be approved. No evidence of record indicates that the petitioner continues to have on file an LCA valid for the period of requested employment.

Beyond the decision of the director, the petitioner has not established the beneficiary is eligible to perform the duties of a specialty occupation related to computer information systems. The petitioner has provided an evaluation from a credentials evaluation service based on the beneficiary's foreign degree, training, and work experience. The record, however, does not include evidence that the evaluator is qualified to assess the beneficiary's training and work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). To establish an academic equivalency for a beneficiary's training and/or work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). Moreover, although the record contains a copy of the beneficiary's foreign Bachelor of Science degree, it does not contain copies of the corresponding transcripts. In view of the foregoing, the record fails to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a field directly related to the proffered position. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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