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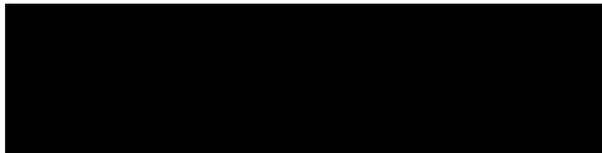
FILE: EAC 07 136 52105 Office: VERMONT SERVICE CENTER Date: NOV 05 2008

IN RE: Petitioner:
Beneficiary:



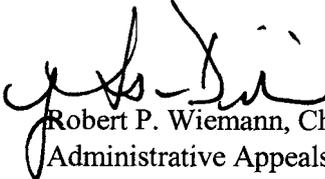
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act.

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for further proceedings.

The petitioner filed a Form I-129 on April 2, 2007. The director issued a decision denying the petition on July 20, 2007. The reason for the denial was that the petitioner had indicated on Part C of the Form I-129H Data Collection Sheet (Numerical Limitation Exemption Information) that the beneficiary had earned a master's or higher degree from a U.S. institution of higher education as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a), and was not subject to numerical cap limitations for the petition filing, when, in fact, no such degree had been earned. The petition was, therefore, denied as being subject to the numerical cap limitation. The petitioner then filed a motion to reopen stating that it had not sought exemption from numerical cap limitations and that it had not answered in Part C of the Form I-129H Data Collection Sheet that the beneficiary had earned the referenced master's degree. Part C of the Form I-129H Data Collection Sheet confirms the petitioner's assertion. The director considered the petitioner's motion, but denied the motion stating that the petitioner had indicated in Part A (General Information) of the Form I-129H Data Collection Sheet that the beneficiary had earned a master's or higher degree from a U.S. institution of higher education as defined in 20 U.S.C. section 1001(a). The petitioner asserted that the notation in Part A was a typographical error, and that all other evidence submitted in support of the Form I-129 petition indicated that the beneficiary held a bachelor's degree.

This director's decision shall be withdrawn and this matter remanded to the director to either adjudicate the petition or return it to the petitioner pursuant to standing operating procedures for petitions filed which may not be accepted due to standard cap limitations. The petitioner indicated clearly on Part C of the Form I-129 Data Collection Sheet that it was not claiming exemption to numerical cap limitations because of the beneficiary's educational qualifications. The director noted specifically in his decision dated July 20, 2007 that was the basis of the denial. The director's subsequent decision of October 16, 2007 acknowledges this error, but he again denied the petition because the petitioner indicated in Part A of the Form I-129 Data Collection Sheet under General Information that a master's degree had been obtained. When looking at whether a petitioner is claiming an exemption to the cap, Part C is the relevant section of the H-1B data Collection Sheet; that part is entitled "Numerical Limitation Exemption Information." In contrast, Part A of the Data Collection sheet is entitled "General Information" and would not be used solely to determine cap exemption. The director erred in denying the petition as being subject to numerical cap limitations based upon a claim of a master's degree exemption by the petitioner.

This matter is remanded to the director for additional proceedings commensurate with the directives of this opinion.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for additional proceedings commensurate with the directives of this opinion, which, if adverse to the petitioner is to be certified to the AAO for review.