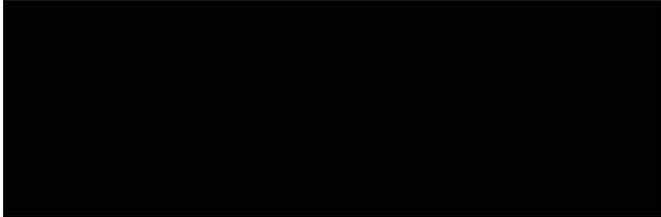




U.S. Citizenship
and Immigration
Services



D1

FILE: EAC 08 143 51615 Office: VERMONT SERVICE CENTER Date: DEC 07 2009

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)

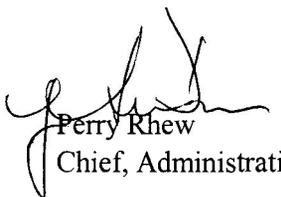
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it is a software consulting and development business, that it employs 32 persons, that it was established in 2005, and that its gross annual income is \$1,900,000 and its net annual income is estimated to be \$150,000. The petitioner seeks to employ the beneficiary as a computer systems analyst from October 1, 2008 to August 23, 2011. 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).

On June 27, 2008, the director denied the petition, determining that U. S. Citizenship and Immigration Services (USCIS) had received sufficient numbers of H-1B **petitions** to reach the 65,000 numerical limitation for fiscal year (FY) 2009 as of April 7, 2008 and had received sufficient numbers of H-1B petitions to reach the additional 20,000 “US Master’s degree” numerical limitation for FY 2009 also as of April 7, 2008. The director noted that the petitioner had indicated on the Form I-129, H-1B Data Collection Supplement, Part C that it was seeking an exemption from the numerical limitations for H-1B classification because the beneficiary had earned a master’s or higher degree from a U.S. institution of higher education.

On appeal, the petitioner contends that the petition was not submitted under the master’s degree quota classification but was submitted and accepted by USCIS under the regular I-129 H cap for fiscal year 2009.

The AAO bases its decision upon its consideration of all of the evidence in the record of proceeding, including: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the director’s denial letter; and (3) the Form I-290B and petitioner’s letter submitted on appeal.

The issue in this matter is whether the petitioner requested an exemption for the beneficiary from the numerical limitations set by the FY 2009 H-1B cap. In general, H-1B visas are numerically capped by statute. Pursuant to section 214(g)(1)(A) of the Act., the total number of H-1B visas issued per fiscal year may not exceed 65,000. On April 8, 2008, USCIS issued a notice that it had received sufficient numbers of H-1B petitions to reach the H-1B cap for FY09, which covers employment dates starting on October 1, 2008 through September 30, 2011. The petitioner filed the instant Form I-129 on April 1, 2008 and requested a starting employment date of October 1, 2008.

Upon review of the Form I-129 H-1B Data Collection Supplement, Part C, Numerical Limitation Exemption Information, the petitioner checked “yes” for the criterion listed for consideration as exempt from the numerical limitations set for H-1B visas based upon the beneficiary’s earning of a master’s or higher degree from a U.S. institution of higher learning. Thus, the petitioner did request consideration for an exemption from the numerical limitations set for H-1B visas. The director’s acceptance of the Form I-129 as a request for adjudication of an exemption from the numerical

limitations was proper and required adjudication of this issue. The director properly determined that the beneficiary was not eligible for the exemption and denied the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed, and the petition will be denied.

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