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Office of Administrative Appeals MS 2090  
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FILE: WAC 06 169 52270 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2009

IN RE: Petitioner:  
Beneficiary:

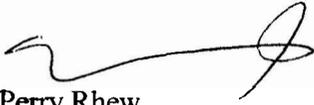


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS: See attached.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO will reopen the petition *sua sponte* and hold the matter in abeyance.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of programmer analyst as an H-1B nonimmigrant 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 petitioner described itself as a software services and product development company and indicated that it employs four persons.

The director denied the petition because the petitioner failed to establish that: (1) it meets the regulatory definition of an intending United States employer as defined by 8 C.F.R. § 214.2(h)(4)(ii); (2) it meets the definition of “agent” at 8 C.F.R. § 214.2(h)(2)(i)(F); (3) it submitted a valid labor condition application (LCA) for all locations; or (4) the proffered position is a specialty occupation.

On appeal, the AAO concurred with the director’s findings. The AAO dismissed the appeal on June 29, 2009 and returned the record of proceeding to the originating office.

Upon review, the AAO will reopen *sua sponte* its decision dated June 29, 2009 for purposes of entering a new decision. *See* 8 C.F.R. § 103.5(a)(5).

Although the matter is reopened *sua sponte*, the AAO will hold the reopened petition in abeyance while it gathers the administrative record of proceeding. Once the record of proceeding has been received, the AAO will review it to determine whether to take favorable or unfavorable action. If the new decision may be unfavorable to the petitioner, the AAO will issue a second notice to allow the petitioner 30 days to submit a brief, as required by 8 C.F.R. § 103.5(a)(5)(ii).

With respect to the reopened petition, the AAO notes that the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The decision of the AAO dated June 29, 2009 is reopened. The matter will be held in abeyance.