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U.S. Citizenship
and Immigration
Services

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DA

APR 01 2005

FILE: LIN 04 124 53909 Office: NEBRASKA SERVICE CENTER Date:

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:

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.

Robert P. Wiemann, Director
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 summarily dismissed. The petition will be denied.

The petitioner is a firm engaged in the direct mail advertising business. Citizenship and Immigration Services (CIS) previously approved a petition for the petitioner to employ the beneficiary as an H-1B nonimmigrant worker in a specialty occupation 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). In order to continue this employment, the petitioner endeavors to continue the beneficiary's H-1B classification and extend his stay.

The director denied the petition on the basis that the petitioner had failed to file a timely certified labor condition application for H-1B Nonimmigrants (Form ETA 9035) (LCA) as required by CIS regulations. The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states:

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 in the occupational specialty in which the alien(s) will be employed.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that with the petition an H-1B petitioner shall submit “[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary.”

The regulation at 8 C.F.R. § 214.2(h)(15)(i) states, in pertinent part:

General. The petitioner shall apply for extension of an alien's stay in the United States by filing a petition extension on Form I-129 accompanied by the documents described for the particular classification in paragraph (h)(15)(ii) of this section. . . .

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(1) states that a request for an H-1B extension of stay “must be accompanied by either a new or a photocopy of the prior certification from the Department of Labor that the petitioner continues to have on file a labor condition application valid for the period of time requested for the occupation.”

The record reflects, and the petitioner does not dispute, that the previous petition was approved for the period December 21, 2000 to November 30, 2003; that the present petition was filed on March 24, 2004, after the expiration of the period of stay authorized under the previous petition; that the present petition specified December 2003 to November 2006 as the period for which the petitioner intended to continue the beneficiary's employment; that that petitioner did not submit a certified LCA prior to the appeal; and that the certified LCA which the petitioner submits on appeal was not certified until June 21, 2004 – months after the petition was filed. In light of these facts, the director's decision to deny the petition accorded with the relevant CIS regulations, cited above. The petitioner failed to comply with the regulatory requirement for filing with the Form I-129 an LCA certified for the period for which the petitioner is applying to extend the beneficiary's stay.

The crux of the appeal is that the director's decision should be overturned because the petitioner has obtained a certified LCA, albeit after the petition was filed.¹ The petitioner indicates no legal or factual error by the director, who correctly applied the relevant CIS regulations to the facts before him.

CIS regulations have no provision for discretionary relief from the LCA requirements. Therefore, the submission of the untimely certified LCA creates no basis for overturning the director's decision.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

As the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition, and as the petitioner presents no additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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

¹ The petitioner also states that it is now submitting (1) a statement that it will comply with the terms of the LCA, and (2) previously lacking evidence that the beneficiary is qualified to perform services in the pertinent specialty occupation. These aspects of the appeal will not be addressed, as they are not relevant to the director's decision, which was based on the absence of a certified LCA.