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FILE: WAC 05 001 51195 Office: CALIFORNIA SERVICE CENTER Date: **AUG 29 2006**

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner is a dental practice. It seeks to employ the beneficiary as an accountant and to extend her classification 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 on the ground that the petitioner did not have an approved Labor Condition Application (Form ETA 9035) for the proffered position at the time its Petition for a Nonimmigrant Worker (Form I-129) was filed to continue the beneficiary's previously approved employment without change and to extend his stay in the United States.

As specified in the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(I):

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 same applies to petitions for an extension of stay in H-1B status. As specified in the regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(I):

The request for extension 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 shows that the petitioner filed the instant Form I-129 extension petition on October 8, 2004, requesting H-1B classification for the beneficiary in the accountant position for a three-year employment period from October 1, 2004 to October 1, 2007. The petition was not accompanied by a Labor Condition Application (LCA) for the proffered position certified by the Department of Labor (DOL). On January 7, 2005, the director sent a request for evidence (RFE) to the petitioner which requested the submission, among other things, of a certified LCA. The petitioner responded to the RFE with a photocopy of the previously certified LCA bearing an approval date of September 15, 2001 and a validity period of October 1, 2001 to October 1, 2004. Since this LCA had already expired, it did not satisfy regulatory requirements. As the petitioner did not provide a valid LCA, the director denied the petition.

On appeal the petitioner claims it was unaware that a new LCA had to be submitted with its extension petition. The petitioner submits a new LCA, certified by DOL on April 25, 2005, with a validity period of April 25, 2005 to September 30, 2007. The new LCA also fails to satisfy regulatory requirements because it was not certified by DOL before the instant H-1B extension petition was filed on October 8, 2004. Thus, the LCA does not comply with 8 C.F.R. § 214.2(h)(15)(ii)(B)(I).

For the reasons discussed above, the petitioner has failed to establish the beneficiary's eligibility for classification as a nonimmigrant worker employed in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

This dismissal is without prejudice to the petitioner's filing of a new petition accompanied by the proper documentation and requisite fee.

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