

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D-2

FILE: SRC 04 205 50692 Office: TEXAS SERVICE CENTER Date: MAY 24 2006

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, Chief
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 dismissed. The petition will be denied.

The petitioner is recruitment agency and seeks to employ the beneficiary as a medical technologist. 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).

The director denied the petition because the petitioner did not have an approved labor condition application for the proffered position at the time of filing. **On appeal, counsel submits a letter and additional documentation.**

The AAO will discuss the director's determination that the petitioner did not have an approved Labor Condition Application H-1B Nonimmigrant (ETA Form 9035) (LCA) for the proffered position at the time of filing.

When a petition is filed under this section the petitioner must provide evidence of an approved Labor Condition Application for H-1B Nonimmigrant (ETA Form 9035). Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B) petitions involving a specialty occupation require the following:

- (1) 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

On or about July 22, 2004, the petitioner submitted the instant H-1B petition. The petitioner failed to include a labor condition application (LCA) that was certified for Chicago, IL, the place of intended employment. On July 29, 2004, the director issued a request for evidence for information from the facility where the beneficiary was to be employed, including a certified LCA. The director received a response from the petition on September 24, 2004. The petitioner submitted an LCA certified July 21, 2004, which indicated that the employer was the petitioner, Agape Personnel Services, and that the job site was Houston, Texas. The LCA did not name the actual employer, NICL Laboratories in Chicago, IL. On October 7, 2004, the

director issued his decision denying the petition. The director noted that the petitioner had not submitted a valid LCA certified prior to the submission of the petition. The director determined that the petitioner did not have an approved labor certification for the proffered position at the time of filing.

On appeal, counsel explains that due to an oversight, the LCA that the petitioner filed was for Houston, TX and not Northbrook, IL where the beneficiary will be working. On appeal, the petitioner submits an LCA for Chicago Clinical Labs DBA NICL Laboratories in Northbrook, IL, certified on October 11, 2004.

Upon review of the record, the petitioner has not established that it had a certified labor condition application for the proffered position valid for the place of employment at the time the I-129 H-1B petition was filed. The petitioner admits the labor condition application was certified after the instant petition was filed. The certified labor condition application was not submitted with the petition at the time of filing. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

The burden of proof in these proceedings 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.