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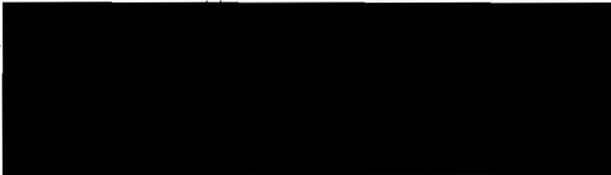
FILE: WAC 03 053 51804 Office: CALIFORNIA SERVICE CENTER Date: NOV 28 2006

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:



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, California Service Center, denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a dental clinic. It seeks to employ the beneficiary as a dental specialist/researcher. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 February 5, 2004. The petitioner filed an appeal and the AAO withdrew the director's decision and remanded the matter to the director for entry of a new decision. In the October 3, 2005 remand decision, the AAO determined that the duties detailed by the petitioner clearly indicated that the beneficiary would analyze patient records and assist dentists in making proper determinations and diagnosis, and recommend medical solutions for patients' conditions. The AAO found that the duties of the proffered position encompassed the practice of dentistry in the State of California, which requires a license. The AAO remanded the matter with the instruction to the director to determine whether the beneficiary is qualified to perform the duties of a licensed dentist and to obtain such additional information as he deems necessary in rendering his decision. The AAO also instructed to the director to certify the matter to the AAO if his subsequent decision was adverse to the petitioner.

The record contains the director's February 16, 2006 request for further evidence (RFE). The RFE allowed the petitioner until May 11, 2006 to submit the evidence requested. On September 11, 2006, the director determined that the petitioner had failed to respond to the RFE within the allotted time period and that pursuant to 8 C.F.R. § 103.2(b)(13), the petition was considered abandoned. The director certified the matter to the AAO for review.

The AAO observes that the director correctly considered the matter abandoned and notes that no appeal lies from the decision. *See* 8 C.F.R. § 103.2(b)(15). Upon review of the record on certification, the petitioner has not provided evidence that the beneficiary is licensed to perform the duties of a dentist in the State of California. As such, the petitioner has not established that the beneficiary is eligible to perform the duties of the proffered position in California. Accordingly, the AAO will affirm its October 3, 2005 decision and will not disturb the director's September 11, 2006 denial of the petition due to abandonment.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. As always, 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 met that burden.

ORDER: The AAO's October 3, 2005 decision is affirmed, the director's September 11, 2006 denial of the petition based on abandonment will not be disturbed, and the petition is denied.