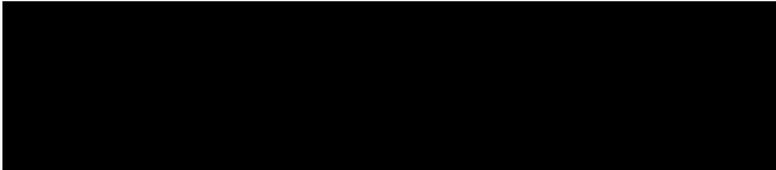


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

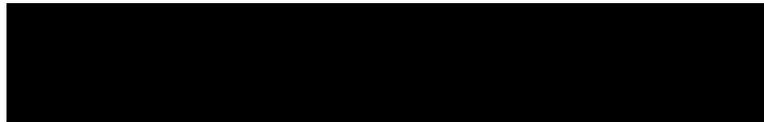


DL

APR 17 2007

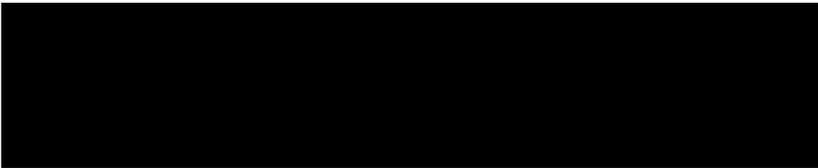
FILE: SRC 06 015 51510 Office: TEXAS SERVICE CENTER Date:

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:



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.

*for* *Michael T. Kelly*  
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 dismissed. The petition will be denied.

The petitioner is an employment agency and professional association that seeks to extend its authorization to employ the beneficiary as a computer support specialist and systems administrator. 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, at the time of filing, the petitioner had not obtained a certified labor condition application (LCA). The director also found the beneficiary ineligible for an extension of stay because he had violated his H-1B nonimmigrant status. On appeal, the petitioner states, in part, that the director's decision "is erroneous because it was based on an inaccurate assumption that the certified LCA was not certified when in fact it was certified until May 15, 2006 and therefore the initial H-1B Visa should have been also good till said date." The petitioner submits a labor condition application for an "instructional coordinator in computer and informat" certified on April 16, 2003 for "Date Starting 05/15/2003 and Date Ending 05/15/2006."

Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form I-129 or I-539. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for an extension of stay, this issue will not be reviewed.

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,
3. Evidence that the alien qualifies to perform services in the specialty occupation. . . .

The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B) provides that the request for extension must be accompanied by either a new or 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 extension. 8 C.F.R. § 103.2(b)(12) requires that evidence must establish eligibility as of the time of filing.

The petitioner has provided a certified labor condition application for a computer support specialist that is valid for the period starting 01/20/2006 and ending 01/20/2009. Nevertheless, that application was certified on January 20, 2006, a date subsequent to November 10, 2005, the filing date of the visa petition. The labor condition application submitted on appeal for an "instructional coordinator in computer and informat" is also noted. As that labor condition application is valid for the period starting 05/15/2003 and ending 05/15/2006, it is not valid for the period of time requested for the extension. Furthermore, it is for an "instructional coordinator in computer and informat," as opposed to the proffered position of "computer support specialist and systems

administrator.” In view of the foregoing, the petitioner has not overcome the director’s objections. For this reason, the petition may not be approved. Accordingly, the AAO shall not disturb the director’s denial of the petition.

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.