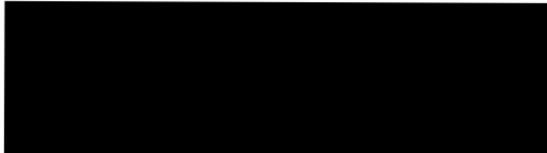




U.S. Citizenship
and Immigration
Services

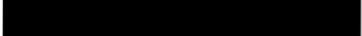
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prevent clearly unwarranted
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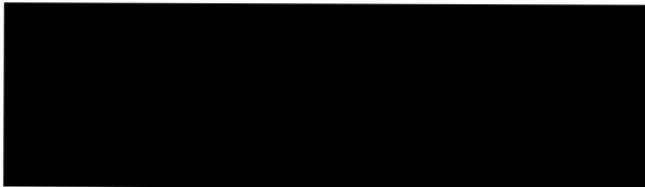
D2

FILE: WAC 04 174 51768 Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 2008**

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)

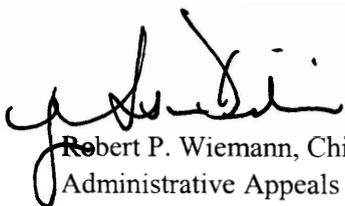
ON BEHALF OF PETITIONER:



[The petitioner responded to the director's RFE after our remand decision – but I do not see a withdrawal by this guy at this attorney.]

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 her 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 consumer electronics importer and wholesaler. It seeks to extend the employment of the beneficiary as a part-time computer systems administrator. 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).

On February 15, 2005, the director denied the petition, determining that the petitioner had provided fraudulent misrepresentation of material facts. On appeal, the AAO withdrew the director's decision but remanded the petition to the director for a determination on the issue of specialty occupation. In its August 1, 2007 decision, the AAO discussed the deficiencies in the record regarding the proffered position and whether the petitioner had established that the duties of the proffered position comprised the duties of a specialty occupation. The AAO instructed the director to enter a new decision and noted that the director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position qualifies for classification as a specialty occupation.

The record reveals that the petitioner submitted a response to the director's March 7, 2008 request for further evidence which was considered by the director in her July 31, 2008 decision. On July 31, 2008, the director determined that the petitioner had failed to establish that the proffered position is a specialty occupation within the meaning of the regulations. As instructed, the director certified the adverse decision to the AAO for review. Although afforded the opportunity to submit a brief or statement for consideration by the AAO on certification, the petitioner has not submitted further evidence.

The AAO concurs with the director's reasoning in this matter. The petitioner has not established that the proffered position of computer systems administrator is a specialty occupation pursuant to any of the criteria set out in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's July 31, 2008 denial of the petition that had been certified to the AAO for review.

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 director's July 31, 2008 denial of the petition is affirmed and the petition is denied.