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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

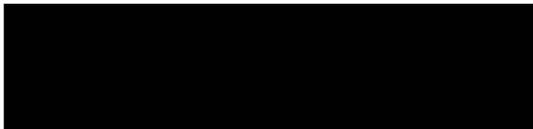
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FILE: EAC 07 136 52515 Office: VERMONT SERVICE CENTER Date: **SEP 30 2000**

IN RE: Petitioner:
Beneficiary:



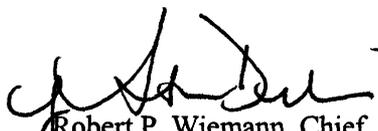
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Vermont 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 provides information technology services. It seeks to employ the beneficiary as a programmer analyst. 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 2008 fiscal-year cap for the issuance of H-1B visas, set by section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A), was reached on April 2, 2007. The petitioner filed the Form I-129 petition on April 2, 2007. The petition was accepted and adjudicated because the petitioner indicated on the Form I-129 that the beneficiary met the cap exemption criterion at section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), as a beneficiary who, in the words of the Act, "has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))."

The director denied the petition on the basis that the beneficiary did not meet the requirements specified in section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), and thus the beneficiary was subject to the annual cap. The director noted that the evidence of record showed that the beneficiary would be making corrections to her thesis for review and that it was anticipated that the beneficiary would officially receive her degree in August 2007. The director denied the petition determining that the beneficiary was not eligible for the benefit of the "master's cap exemption."

On appeal, the petitioner contends that the beneficiary had completed her required coursework towards the degree by December 2006; thus her H-1B petition was filed pursuant to the master's degree quota. Counsel references the previously submitted March 22, 2007 letter signed by [REDACTED] professor and Director of Graduate Studies, wherein [REDACTED] confirmed that the beneficiary is a candidate for the degree of Master of Science in the Department of Mechanical Engineering at the University of Utah and noted that the beneficiary had successfully defended her thesis on December 20, 2006 and had completed all course requirements for this degree. [REDACTED] also noted that the beneficiary would be making corrections to her thesis during spring semester and that it was anticipated that the beneficiary would receive her degree in August 2007.

The AAO bases its decision upon its consideration of all of the evidence in the record of proceeding, including: (1) the petitioner's Form I-129 (Petition for Nonimmigrant Worker) filed April 2, 2007 and the supporting documentation filed with it; (2) the director's August 2, 2007 denial letter; and (3) the Form I-290B and the petitioner's statement thereon.

Section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C) as modified by the American Competitiveness in the Twenty-first Century Act (AC21), Pub. L. No. 106-313 (October 17, 2000), states, in relevant part, that the H-1B cap shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) of the Act who "has earned a master's or higher degree from a United States

institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000."

The evidence presented by the petitioner does not establish that the beneficiary earned a master's degree from the University of Utah before the Form I-129 petition was filed. When the petition was filed, the beneficiary had yet to earn a master's degree. Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or the beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The AAO finds that the evidence of record does not establish that the beneficiary is exempt from the H-1B visa cap that the petitioner requested under the requirements of section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C) because the beneficiary had not earned a master's degree at the time that the petition was filed. Accordingly, the AAO will not disturb the director's denial of the petition.

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 appeal is dismissed. The petition is denied.