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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D<sub>2</sub>



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2010

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

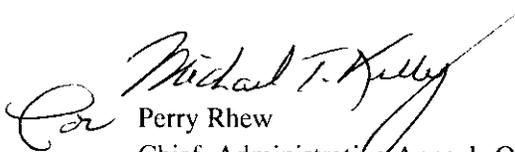
ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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 a certified public accounting firm that seeks to employ the beneficiary as a staff auditor. Accordingly, the petitioner 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, finding that the petition was filed more than six months prior to the date of the petitioner's actual need for the beneficiary's services. On appeal, the petitioner states that it erroneously provided the wrong starting date for the beneficiary's employment, and requests that the petition be amended on appeal to reflect a new commencement date that falls within the prescribed period set forth by the regulations.

The regulation at 8 C.F.R. § 214.2(h)(9) addresses the approval and validity of H-1B petitions. Specifically, the regulation at 8 C.F.R. § 214.2(h)(9)(i)(B) states:

The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services and training.

As noted by the director, the petitioner filed the instant petition on April 2, 2009. According to the petitioner's claims on Form I-129, Petition for a Nonimmigrant Worker, and in its letter dated March 10, 2009, the beneficiary's employment would commence on December 1, 2009, approximately eight months after the filing of the petition. Noting that the requested start date exceeded the six months allotted in the regulation, the director denied the petition based on the petitioner's failure to comply with the regulation at 8 C.F.R. § 214.2(h)(9)(i)(B).

On appeal, the petitioner asserts that it misread the filing instructions, and states that the actual start date for the beneficiary would be October 1, 2009, a date within the required six-month period under 8 C.F.R. § 214.2(h)(9)(i)(B).

As will now be discussed, the AAO concurs with the director's decision. Under 8 C.F.R. § 103.2(b)(1):

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions.

The petitioner errs in contending on appeal that it has overcome the deficiency in the evidence by amending the requested starting date for the beneficiary. Specifically, the petitioner's contention is refuted by the regulation at 8 C.F.R. § 214.2(h)(2)(E), which states:

*Amended or new petition.* The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must

be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

It is self-evident that a change in the requested starting date for the beneficiary's services or training is a material change in the terms and conditions of employment. On appeal, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner's attempt to remedy the deficiency by changing the intended employment dates of the beneficiary is ineffective. A petitioner must establish eligibility at the time of filing a 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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed, and the petition will be denied.

**ORDER:** The appeal is dismissed. The petition is denied.