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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

D2



FILE: WAC 08 131 51978 Office: CALIFORNIA SERVICE CENTER Date: **MAR 09 2010**

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)

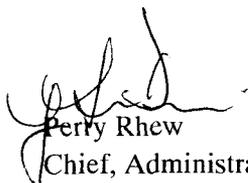
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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 describes itself as a business that designs, develops, manufactures, and sells custom lighting products and solutions. The petitioner indicates that it currently employs five persons. It seeks to extend its authorization to employ the beneficiary as "CEO Research and Development." 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 the petitioner failed to submit a labor condition application (LCA) that had been properly certified by the Department of Labor (DOL).

On appeal, counsel states, in part, as follows: that U.S. Citizenship and Immigration Services (USCIS) approved another petition for the beneficiary (WAC-08-131-52360) and subsequently revoked it; that in late July of 2008, she moved the location of her law firm and, around this time, her client also moved his place of employment, though USCIS continued to send information to their old addresses even though they submitted change-of-address requests; that around the same time she received the intent to revoke another petition (WAC-08-131-52360) filed on behalf of the beneficiary, her client received the denial notice for the instant petition; that her law clerk mistakenly did not include a properly certified LCA, which resulted in the denial of the instant petition; and that she has since submitted the properly LCA to the California Service Center twice via overnight mail and a third time via fax. As supporting documentation, counsel submits the following: correspondence dated September 18, 2008, addressed to counsel at her current address, from the California Service Center, indicating that the change-of-address request had been received and duly updated for the instant petition; copies of the approval notices for the petitioner (WAC-08-131-52360) and his family members; evidence that the denial notice of the instant petition was mailed to counsel's former address: [REDACTED]

92024; a letter dated August 12, 2008 from counsel, addressed to USCIS in London, Kentucky, notifying USCIS of her recent address change, and referencing another petition (WAC-08-131-52360) filed on behalf of the beneficiary; correspondence dated July 10, 2008, addressed to counsel at her current address, from the California Service Center, indicating that the change-of-address request had been received and duly updated for another petition (WAC-08-131-52360) filed on behalf of the beneficiary; and copies of information, including an LCA certified by the DOL on September 3, 2008, faxed to the California Service Center in reference to another petition (WAC-08-131-52360) filed on behalf of the beneficiary.

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)(I) provides that the request for extension must be accompanied by either a new or photocopy of the prior certification from the DOL that the petitioner continues to have on file an LCA valid for the period of time requested for the extension.

In this matter, the petitioner filed the instant I-129 petition on April 18, 2008. The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a request for evidence (RFE) on August 7, 2008, addressed to counsel's then address in Encinitas, California. In the request, the director asked the petitioner to submit a properly certified LCA.

In a letter dated August 12, 2008, submitted in response to the director's RFE, counsel stated, in part, that the requested LCA had been submitted to USCIS "on two or three occasions while the case was processing." Counsel also questioned the director's need for the additional evidence, as she had already received approval notices for the beneficiary and his family members, (referring to another petition (WAC-08-131-52360) filed on behalf of the beneficiary). As supporting documentation, counsel resubmitted a copy of the same LCA that had not been properly certified by the DOL, and copies of the approval notices for the petitioner (WAC-08-131-52360) and his family members.

On August 27, 2008, the director denied the petition. The director found that the petitioner had failed to submit a properly certified LCA.

As discussed above, the director issued an RFE on August 7, 2008, requesting that the petitioner submit a properly certified LCA for the instant petition. Neither counsel nor the petitioner, however, complied with the director's request. The AAO acknowledges counsel's additional assertion that her law clerk mistakenly did not include a properly certified LCA. It is noted, however, that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Counsel's additional assertions on appeal regarding the submission of documents pertaining to another petition (WAC-08-131-52360) filed on behalf of the beneficiary, and the approval and subsequent revocation of that petition, are also noted. Each petition filing, however, is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO also acknowledges counsel's assertion that USCIS continued to send information to her and the petitioner's old addresses. A review of the record, however, reflects that counsel received the director's RFE and responded timely. Moreover, the letter addressed to counsel at her current address from the California Service Center, indicating that the change-of-address request had been received and duly updated for the instant petition, was dated September 18, 2008, after the August 27, 2008 denial of the petition. As such, counsel has not established that the director improperly mailed correspondence pertaining to the instant petition.

Counsel's comments and additional information are noted. Nevertheless, the petitioner failed to submit a properly certified LCA for the instant petition. The petitioner should have obtained the certification from the DOL prior to filing the instant petition. Regulations at 8 C.F.R. § 214.2(h)(4)(i)(B)(I) provide that *before filing a petition for H-1B classification in a specialty occupation*, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. (Emphasis added.) Since this has not occurred, the petition may not be approved. No evidence of record indicates that the petitioner continues to have on file an LCA valid for the period of requested employment.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The director's decision is affirmed. The petition is denied.