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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 01 2011**

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:
[REDACTED]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the 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 sustained and the petition will be approved, valid until June 30, 2012.

The petitioner is a non-profit educational institution/charter school with 33 employees and approximately 336 students in grades K to 5 that seeks to continue to employ the beneficiary as a mathematics teacher from October 1, 2010 to July 6, 2013. 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 on June 10, 2010 because she found that the petitioner failed to demonstrate that there is a reasonable and credible offer of employment and that the petitioner failed to submit all the evidence requested in the director's Request for Additional Evidence (RFE) that was issued on April 19, 2010. The director based her decision on discrepancies in the petitioner's documentation with respect to the number of its employees and the petitioner's Contract for Community School expiration date of June 30, 2010. Additionally, the director noted that the petitioner failed to submit complete quarterly wage reports for the last eight quarters on behalf of all employees.

Counsel timely filed an appeal on July 12, 2010. On appeal, counsel for the petitioner asserts that USCIS did not give the petitioner an opportunity to respond to the director's findings regarding discrepancies in the documentation submitted by the petitioner. Counsel includes a letter from the petitioner explaining the discrepancies along with supporting documentation. The petitioner explains the discrepancies found by the director as follows:

- The Form I-129 asks for the number of employees at the time of filing whereas the federal tax return asks for the number of employees on the Forms W-3. Therefore, the number of employees on the tax return represents the number of employees, part-time or full-time, who worked any time during the calendar year and received at least one paycheck. For example, this number on the tax return could include substitute teachers. The petitioner further noted that there is a clerical error on the 2008 Annual Tax Return – the number of employees was listed as 47, but it should have been 27. The correct number of 27 was listed on the petitioner's 2008 Form W-3.
- Counsel states that the petitioner inadvertently submitted the Federal Quarterly Return instead of the quarterly wage reports in response to the RFE. On appeal, the petitioner has submitted copies of the petitioner's 2008 quarterly wage reports and notes that the wages its H-1B workers were paid, when annualized based on the date they started respectively working for the petitioner, meet or exceed the proffered wages.
- On appeal, the petitioner has submitted a copy of the petitioner's renewed Community School Contract. This Contract was executed on May 21, 2010 and is valid through June 30, 2015.

The AAO finds the petitioner's explanations for any discrepancies and omissions found by the director to be reasonable in light of the corroborating evidence submitted. Consequently, the petitioner has demonstrated that there is a reasonable and credible offer of employment and the

petitioner is likely to comply with the terms and conditions of employment. Therefore, the basis for the director's decision will be withdrawn.

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 sustained that burden. However, since the beneficiary's temporary license expires on June 30, 2012, the petition should be approved only through that date, rather than through July 6, 2013 as was requested in the petition. *See* 8 C.F.R. § 214.2(h)(4)(v)(E).

ORDER: The appeal is sustained. The director's decision denying the petition is withdrawn. The petition is approved, valid until June 30, 2012.