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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

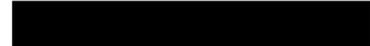
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Date: **MAY 02 2012**

Office: CALIFORNIA SERVICE CENTER



IN RE:



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:

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 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 sustained. The petition will be approved.

On the Form I-129 visa petition the petitioner stated that it is a software development firm. To employ the beneficiary in what it designates as a software development engineer position, the petitioner endeavors to classify him 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 petitioner failed to establish (1) that it would employ the beneficiary in a specialty occupation position, (2) that the petitioner has standing to file the instant visa petition as the beneficiary's prospective United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii) or as an agent within the meaning of that term at 8 C.F.R. § 214.2(h)(2)(i)(F), and (3) that the Labor Condition Application (LCA) submitted in support of the visa petition is valid for all of the locations where the beneficiary would work.

On appeal, counsel asserted that the director's bases for denial are erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

Based upon its review of the entire record of proceeding, including the submissions on appeal addressing the grounds for the director's decision, the AAO finds that the petitioner has overcome the bases of the director's denial. As the totality of the evidence presented in this particular record of proceeding establishes (1) the specialty occupation nature of the particular position for which this petition was filed, (2) the petitioner's standing to file the instant visa petition as the beneficiary's prospective United States employer, (3) that the Labor Condition Application (LCA) submitted to support the visa petition is valid for the location where the beneficiary would work, and (4) that the beneficiary is qualified to serve in the proffered position, the appeal will be sustained and the petition will be approved.

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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The director's decision is withdrawn, and the petition is approved.