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



U.S. Citizenship
and Immigration
Services

DATE: DEC 04 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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 THE PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg" with a stylized flourish at the end.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

On the Form I-129 visa petition, the petitioner describes itself as a data collection, information processing and application software company established in 1962. In order to employ the beneficiary in what it describes as a test developer / psychometrician position, the petitioner seeks to classify her 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 submit an appropriate and valid Department of Labor (DOL), Form ETA-9035, Labor Condition Application (LCA). On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; (5) the Form I-290B and supporting materials; (6) the AAO's RFE; and (7) the petitioner's response to the AAO's RFE. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's sole ground for denying this petition.

Here, the occupational classification used in the submitted LCA comes from a DOL ETA Form 9141, Application for Prevailing Wage Determination. As the job description used by the petitioner in the prevailing wage determination request matches that used in the petition filed with U.S. Citizenship and Immigration Services and as there appears to be no reason to question DOL's conclusions in its prevailing wage determination in this case, the AAO finds no error in the petitioner relying on this occupational classification determination made by DOL in its ETA Form 9141. Accordingly, the evidence of record sufficiently demonstrates that this particular position proffered by the petitioner is more likely than not supported by a corresponding LCA, and the director's decision to the contrary will hereby be withdrawn.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained. The director's June 28, 2013 decision is withdrawn, and the petition is approved.