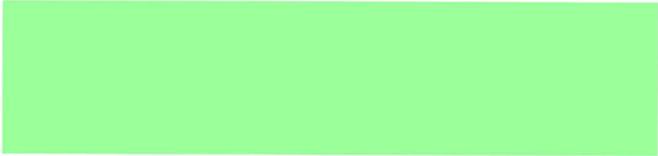


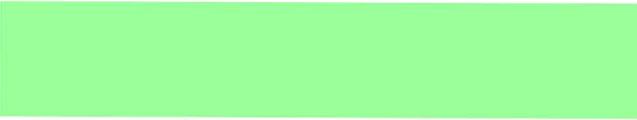


U.S. Citizenship
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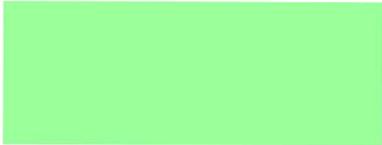


DATE: **DEC 24 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

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)

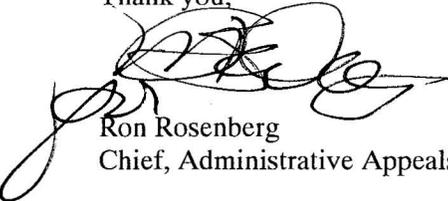
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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,


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 The director's decision will be withdrawn. The matter will be remanded for further consideration and entry of a new decision.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on January 31, 2013. In the Form I-129 visa petition, the petitioner describes itself as a preschool established in 1995. In order to employ the beneficiary in what it designates as a group teacher 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 on March 29, 2013, finding that the petitioner failed to establish that the beneficiary would be performing services at the location originally indicated on the petition. The director further stated that the evidence does not establish the availability of specialty occupation work at the time the petition was filed.

Specifically, the director referred to a letter (dated March 14, 2013) submitted by counsel for the petitioner. According to the director, the letter indicated that "the beneficiary has been working for the petitioner up to the time of filing the petition but that she has been placed on leave based on the fact the company lost the contract they had with the city of New York." The director further stated that "the company is seeking funding and a new location for their business." The director also referenced a letter (dated February 20, 2013) from Mr. [REDACTED]. The director stated that Mr. [REDACTED] letter "confirms [counsel]'s statements as to the lack of funding and the need for a new location after losing their contract with the city of New York."

Counsel for the petitioner filed the Form I-290B, Notice of Appeal or Motion. In Part 3, counsel stated that the "Service grievously erred in denying subject petition despite ample evidence to establish the availability of the specialty position sought to be filled with the Form I-129 petition and the beneficiary's having maintained her H1B status."¹

Upon review of the record of proceeding, the AAO finds that the director misunderstood the March 14, 2013 letter from the petitioner's counsel. Specifically, in the letter counsel is referring to the beneficiary's previous employer, [REDACTED], not to the petitioner. He indicates that [REDACTED] lost the contract with the city, and placed the beneficiary on leave. Therefore, the director's decision, finding that the petitioner failed to establish that the beneficiary would be performing services at the location originally indicated on the petition, is not supported by the evidence in the record, and will be withdrawn.

¹ Under 8 C.F.R. § 214.1(c)(5), there is no appeal of a denial of an application for extension of stay. Specifically, the regulation at 8 C.F.R. § 214.1(c)(5) states the following:

Decision in Form I-129 or I-539 extension proceedings. Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service. **There is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539.**

It must be noted that the record of proceeding contains additional issues, not identified by the director in the decision that must also be reviewed and addressed. For example, the AAO observes that the petitioner has not established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

In the instant case, to properly analyze the issue of whether the proffered position qualifies as a specialty occupation (as well as any other issues that are material to the case), the petition will be remanded to the director for review and issuance of a new decision in accordance with the applicable statutory and regulatory provisions. The director may request any additional evidence considered pertinent for its determination.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision.