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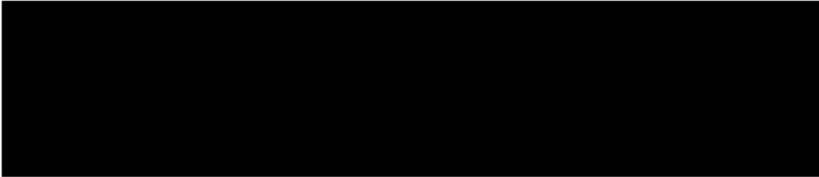
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 800 12656 Office: CALIFORNIA SERVICE CENTER Date: AUG 04 2008

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 is engaged in warehousing and the assembly of automotive components. It seeks to extend its authorization to employ the beneficiary as a manufacturer engineer. 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 had not submitted evidence of a certified labor condition application (LCA) valid for the period of time requested for the extension.

The record of proceeding before the AAO contains: (1) the Form I-129 (and corrected version) and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's statement and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

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)(1) 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.

On appeal, the petitioner submits a certified LCA valid from October 11, 2007 to October 11, 2010.

The petitioner's new LCA is noted. Nevertheless, the petitioner's LCA was certified on September 27, 2007, a date subsequent to August 16, 2007, the filing date of the visa petition. The petitioner should have obtained the certification from the DOL prior to filing the instant petition. The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) provides 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.) The regulation at 8 C.F.R. § 214.2(h)(15)(ii)(B)(1) states that the LCA must be valid for the period of time requested on the extension. The petition may not be approved, as no evidence of record indicates that the petitioner continued to have on file an LCA valid for the period of requested employment at the time of filing.

Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Beyond the decision of the director, the record does not establish that the beneficiary is eligible to perform the duties of a manufacturing engineer. The record, as it is presently constituted, contains no evidence of the beneficiary's claimed qualifications. In view of the foregoing, the record fails to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a field directly related to the proffered position. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 appeal is dismissed. The petition is denied.