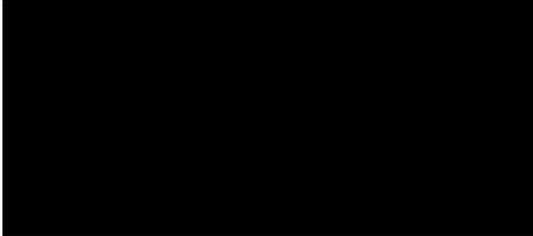




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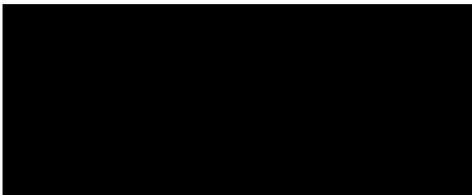
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FILE: WAC 02 104 51694 Office: CALIFORNIA SERVICE CENTER Date: **APR 27 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(i)(b)

ON BEHALF OF PETITIONER:



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.

Mari Johnson

for Robert P. Wiemann, Director
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 dismissed. The petition will be denied.

The petitioner is a corporation that provides product development software services to its clients through consultants on innovative software solutions for financial, pharmaceutical, telecommunications, and technology companies. The petitioner seeks to employ the beneficiary as a programmer analyst, and, therefore, the petitioner 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. § 101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner had failed to demonstrate that it actually had employment for the beneficiary.

The AAO has determined that the director's decision to deny the petition was correct. Because the evidence presented by the petitioner about the proposed employment is fundamentally inconsistent, the record lacks a reliable factual basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner provides information technology (IT) staffing for its client organizations from an office in San Diego, California, and from its headquarters in Irvine, California. The Form I-129 identified San Diego as the "Client/Project Site," and the petitioner's letter that accompanied the Form I-129 stated that the beneficiary "is expected to work only at San Diego, CA." The documents filed with the Form I-129 also included copies of general contracts between the San Diego office and six client firms.

In its response to the request for evidence (RFE) request for work orders under those general contracts, however, the petitioner stated that the beneficiary "will be working only in the Corporate Office in Irvine California on in-house projects." Furthermore, the petitioner stated that the San Diego contract copies were provided "only to show that [the petitioner] has contracts in place for such employers." The petitioner also provided a copy of a certified labor condition application (LCA) – certified within a day of the LCA that was submitted with the instant petition - that cited Irvine as the job cite.

On appeal, counsel asserts that the location of the proffered position has always been San Diego, as indicated in the Form I-129 and supporting documents. As to the RFE information about Irvine as the beneficiary's exclusive work location, counsel states that the RFE response "did not[,] however[,] discuss the San Diego office [but] only the Corporate Head Office in Irvine since this was also discussed in the initial letter submitted with the I-129 petition." The petitioner provides copies of (1) a general contract between the San Diego office and First American Credco (FAC) and the petitioner, and (2) an undated work order from FAC for the services of the beneficiary, with the beneficiary's work to commence on March 7, 2001 (a date almost a year earlier than the date on which the petition was filed). Counsel also explains that, if the FAC contract runs out during the beneficiary's H-1B status, he will be transferred to the Irvine office "to work on in-house projects as per the terms and conditions of the H-1B."

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to

explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The matters on appeal do not satisfactorily explain the contradictory statements about where and for whom the beneficiary would be working. Therefore, the record lacks a reliable evidentiary basis to determine that the petitioner's proffer was authentic. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.