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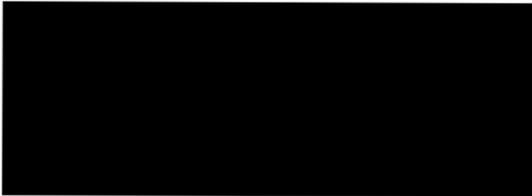
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 186 52489 Office: NEBRASKA SERVICE CENTER Date: **AUG 10 2006**

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:

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.

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

The petitioner is an information technology services firm that seeks to employ the beneficiary as a computer specialist. 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. §1101(a)(15)(H)(i)(b).

The director denied the petition on the grounds that Citizenship and Immigration Services (CIS) could not determine if the proffered position qualified as a specialty occupation because the petitioner, a consulting firm providing contract employers to other places of business, failed to submit the requested evidence of the duties the beneficiary would perform for the petitioner's clients. On appeal, the petitioner submits a brief.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a computer specialist. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing client information systems, client business and financial management procedures; identifying hardware, software and organizational problems; designing, developing, testing, implementing and participating in the quality assurance process for business systems software applications using various hardware and software.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The director requested evidence in the form of “documentation entered into or issued by [the petitioner’s] client(s) which will establish the actual duties to be performed,” such as “the contract between [the petitioner] and the client organization for whom the beneficiary will perform services.” In response, the petitioner submitted the contract between itself and the beneficiary and stated that “the beneficiary will work directly for the petitioner.” The director then denied the petition on the grounds that CIS could not determine if the proffered position qualified as a specialty occupation because the petitioner, a consulting firm providing contract employers to other places of business, failed to submit the requested evidence of the duties the beneficiary would perform for the petitioner’s clients. On appeal, the petitioner submits a brief asserting again that the petitioner will be the “end user” of the beneficiary’s services.

The evidence of record establishes that the director was correct in characterizing the petitioner as an employment contractor that will place the beneficiary at multiple work locations to perform services established by contractual agreements for third-party companies. In its original petition, the petitioner defined itself as a provider of “consulting and technical services” that specializes in “various ecommerce projects and other client/server applications serving a majority of mid-size companies in the United States.” In describing the duties of the proffered position, the petitioner stated that the beneficiary “will work in a team on an in-house project to design, implement, document and perform the necessary upgrades as time progresses” with the goal of “finish[ing] the project on time with optimal cost and good satisfaction from the client.” The petitioner, however, has provided no contracts, work orders or statements of work describing the duties the beneficiary would perform for its clients, in spite of the director’s request that the petitioner do so. Therefore, the petitioner has not established the proffered position as a specialty occupation.

Petitioner’s contention that the beneficiary will work directly for the petitioner is not consistent with the original evidence it submitted. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has failed to do so here.

The court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a “token employer,” while the entity for which the services are to be performed is the “more relevant employer.” The *Defensor* court recognized that evidence of the client companies’ job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce

evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.

As the record does not contain any documentation that establishes the specific duties the beneficiary would perform under contract for the petitioner's clients, the AAO cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(I).

As demonstrated in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.