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U.S. Citizenship  
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Services

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FILE: WAC 07 146 52703 Office: CALIFORNIA SERVICE CENTER Date: **JUN 06 2008**

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 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 a software development and consulting business that seeks to employ the beneficiary as a software 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 demonstrated that its labor condition application (LCA) is valid.

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) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. 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 director found that the petitioner's LCA does not cover the location in the State of Wisconsin where the beneficiary will provide his services.

On appeal, counsel states, in part, as follows:

The petitioner provided evidence [in response to the RFE] indicating that the beneficiary would initially be employed at the petitioner's place of business in Los Angeles. Further, after two months of employment with the petitioner, he would be placed in the [S]tate of Wisconsin pursuant to the petitioner's contractual agreement with the [S]tate of Wisconsin's Department of Administration.

At the time of the filing of the LCA, the only concrete address that the petitioner could provide was its own business address because pursuant to the contract with the [S]tate of Wisconsin, the beneficiary could be assigned at one of the numerous locations throughout the state depending on its administration's current needs.

Therefore, the petitioner was not able to state on the LCA any specific areas or addresses of the future assignments in Wisconsin. The petitioner intended to file a new LCA once the [S]tate of Wisconsin's Department of Administration assigned the beneficiary to a specific location.

The record contains the following:

- A certified LCA listing the beneficiary's work location as Los Angeles, California; and
- A letter addressed to the petitioner, dated November 9, 2005, from the Director of the Wisconsin Office of Contract Compliance of the Wisconsin Department of Administration, naming the petitioner as an "eligible contractor."

Counsel asserts in her August 7, 2007 letter that the beneficiary would work "on whichever in-house projects the [petitioner] is working on upon his arrival. Within two months of his arrival, he will be placed with the State of Wisconsin, with whom [the petitioner] has been approved as a provider of computer professionals." The record, however, does not contain specific details of the project to which the beneficiary will be assigned either in-house at the petitioner's location or off-site at the Wisconsin Department of Administration. Counsel acknowledges that the State of Wisconsin's Department of Administration has various work locations to which it might assign the beneficiary. As the beneficiary's specific duties and ultimate worksite are unclear, it has not been shown that the work for the requested three-year period would be covered by the location on the LCA on file. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the proffered position is a specialty occupation, as the record does not contain substantive evidence that the duties of the proffered position incorporate the theoretical and practical application of a body of highly specialized knowledge that requires the 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. As the record indicates that the beneficiary would be working at the petitioner's end-client, only a detailed job description from the entity that requires the alien's services, in this case, the Wisconsin Department of Administration, will suffice to meet the burden of proof in these proceedings. *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000).

Nor has the petitioner established that the beneficiary is qualified to perform a specialty occupation. The record does not contain a copy of the beneficiary's university transcripts or an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Of further note, the record contains no evidence that Sikkim Manipal University of Health, Medical and Technological Sciences is either recognized or accredited as an institution

of higher education in India.<sup>1</sup> See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). For these additional reasons, the petition may not be approved. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

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<sup>1</sup> It is also noted that Sikkim Manipal University of Health, Medical and Technological Sciences does not appear on the Electronic Database for Global Education (EDGE) website at <http://aacraoedge.aacraoedge.org> as an accredited institution.