



U.S. Department of Justice

Immigration and Naturalization Service

DA

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D. C. 20536



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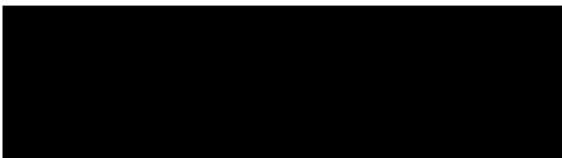
IN RE: Petitioner:  
Beneficiary:



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)

Identifying data removed to  
prevent clearly unwarranted  
invasion of personal privacy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert F. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software development business with two employees and no gross annual income indicated. It seeks to employ the beneficiary as a programmer analyst for a period of three years. The director determined the petitioner had not established that a specialty occupation actually exists.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not submitted any evidence such as contracts, agreements, or sales as proof that the petitioner has a position available for the beneficiary. On appeal, counsel states in part that as a start-up company, the petitioner is in the process of designing, developing, and testing proprietary software for the e-commerce industry. Counsel also states that the petitioner's founders have a net worth in excess of \$9.4 million.

8 C.F.R. 214.2(h)(9)(i) states in part that the director shall consider all the evidence submitted *and such other evidence as he or she may independently require to assist his or her adjudication.* (Emphasis added.) Further, in a Service memorandum entitled "Supporting Documentation for H-1B Petitions," dated November 13, 1995, it states as follows:

Requests for contracts should be made only in those cases where the officer can articulate a specific need for such documentation.

In the present case, as the record contains no evidence of the level of business being conducted by the petitioner, the director properly requested additional evidence such as contracts to determine the bona fides of the job offer. Counsel indicates that the petitioner has not yet begun to conduct business but now has five employees engaged in software design, development, and testing. The petitioner's letter of support dated March 18, 1999, indicates that the beneficiary "is being offered a temporary full time employment in the position of programmer analyst to design and develop computer programs for our customer usage." The record, however, contains no evidence that the petitioner has any customers. As such, the petitioner has not established that a specialty occupation is immediately available to the beneficiary upon entry to the U.S.

It is also noted that the petitioner's labor condition application shows that the beneficiary would be employed for a three year period at [REDACTED], Suite 101, Washington Crossing, PA 18977, the same address that is listed on the petition. The petitioner's address on its quarterly tax return for the quarter ending on June 30, 1999, however, is listed as: 1558 River Road, New Hope, PA 18938. The petitioner's lease, dated February 1, 1999, reflects its address as: 1082 Taylorsville Rd., Suite #101 & 103. The petitioner's "headquarters" address listed at its website is: [REDACTED] West, Suite 150, Langhorne, PA 19047. As such, the authenticity of the petitioner's lease is in question, and it is not clear whether the petitioner has complied with the terms of the labor condition application, which shows that the beneficiary would be employed at the Washington Crossing address mentioned above.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on 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. (Comm. 1988).

No additional evidence has been submitted on appeal to overcome the objection of the director. As such, the petitioner has not established that a specialty occupation is available for the beneficiary. For this reason, the petition may not be approved.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary qualifies

to perform services in a specialty occupation. The record does not contain an independent evaluation indicating that the beneficiary holds a computer-related degree or an equivalent. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.