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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-00-243-52664 Office: Nebraska Service Center Date: JUL 08 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

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 P. Wiemann, 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 sustained.

The petitioner is a natural history museum with 539 employees and a gross annual income of \$36,000,000. It seeks to employ the beneficiary as a web master for a period of three years. The director determined the petitioner had not established that the proffered position conforms to the position requested on the labor condition application.

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, when requested to submit additional information, revised the title of the proffered position to that of a "manager, web publishing" from its original title of "webmaster" as reflected on the labor condition application, stating that the beneficiary would not be performing the technical duties of the website. The director concluded that the revised job title does not conform with the position of "webmaster" that is requested on the petitioner's labor condition application and, therefore, the petitioner had not complied with the terms of the labor condition application. On appeal, counsel states, in part, that the title used on any labor condition application does not govern the duties or function of the position and should not determine the propriety of the labor condition application. Counsel further states that the Illinois Department of Employment Security does not differentiate between "webmaster" and "manager, web publishing" but classifies them both

as a data base administrator. Counsel also states that so long as the representation of the proposed duties has been consistent throughout the process, the position's title should not be material. Counsel additionally submits excerpts from various publications in support of his argument that the position of webmaster is not limited to technical aspects and may not even include such duties.

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 petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- * Develop and manage web site content for the Field Museum web site.
- * Assist in the design and development of the scientific content and education-based web sites.
- * Implement internet-based applications involving scientific or education related content.
- * Consult with scientific staff on utilizing the Internet to communicate research objectives and results, and for delivering teaching and learning materials.
- * Assist in the development of Museum web site policies and guidelines.
- * Recommend web development strategies and tools.

In a letter dated December 28, 2000, the petitioner's vice president and chief information officer states, in part, that:

. . . please be advised that this position of Webmaster is not a traditional industry-based Webmaster. In fact, although we have used the title of Webmaster in our petition, internally we refer to this position as Manager, Web Publishing. This title better reflects the roles and responsibilities this unique position demands. This specialty occupation has different requirements from the technical focus of a traditional industry-based Webmaster and demands a differing skill set and underlying knowledge base.

. . . this position does not entail the technical aspects normally associated with the position of Webmaster. The Computer Services Department is tasked with these obligations, such as performance issues such as speed of access . . . the primary function of the position is of a scientific nature, requiring the application of highly specialized knowledge which could only be obtained through advanced study of natural sciences.

The petitioner's vice president and chief information officer describes the beneficiary's proposed duties and estimated amount of time required, in part, as follows:

Collaborating with academic staff re: Web publishing requirements on joint research projects 30%

Collaborating with Education department on web-based educational programming initiatives 25%

Collaborating with Web Publishing/Computer Services departments for web applications development 25%

Management of Web Publishing Department: scientific and educational web development management; administration 10%

Managing R&D and communication (committee/department based) 10%

Although the petitioner has amended the position title from that of "webmaster" to that of "manager, web publishing," the duties that were described for the proffered position on the initial I-129 petition appear to be consistent overall with those described in the petitioner's letter dated December 28, 2000, when the petitioner's vice president and chief information officer indicated that the proffered position was internally referred to as "manager, web publishing." As the actual duties of the proffered position do not appear to have been amended since the initial filing of the petition, there does not appear to be any violation of the terms of the petitioner's labor condition application. In view of the foregoing, the petition may be approved.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.