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U.S. Department of Justice

Immigration and Naturalization Service

Identification card deleted to prevent clearly unwarranted admission of persons

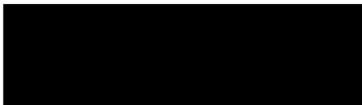
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-218-53621 Office: Vermont Service Center

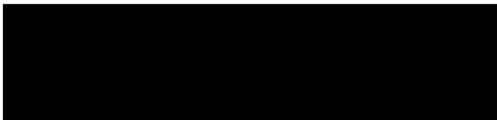
Date: 24 MAY 2002

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)

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 case will be remanded to the director for entry of a new decision.

The petitioner is a holding company with one employee and no stated gross annual income. It seeks to extend the employment of the beneficiary as a business manager for a period of three years. The director determined the petitioner had not established that its business activity would provide sufficient work to fully employ the beneficiary in a specialty occupation for the requested period of time.

On appeal, counsel submits a brief and additional documentation.

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 based his denial of the petition on the conclusion that the proffered position was not a specialty occupation because the petitioner had not established that its business activity would provide sufficient work to fully employ the beneficiary on an H-1B level. By relying upon this issue as the sole determinative basis for denial, the director has introduced the concept of "speculative employment" into this proceeding. There is no support for the exploration of this concept per se in either statute or regulations.

In determining whether the proffered position is a specialty occupation, the director must focus on the nature of the specific duties of such position. While the business activities of the petitioner are among the relevant factors to be considered in

reaching such a determination, the director cannot limit his analysis to this one issue and then subjectively conclude that the petitioner does not have sufficient work to fully employ the beneficiary on an H-1B level. The director shall attempt to analyze and characterize the offered job, along with its associated duties, with sufficient specificity as to facilitate the correlating of the position with the most appropriate and relevant occupational classification. In the instant case, it must be noted that while the petitioner listed the title of the proffered position on the Form I-129 petition as "business manager," the title of the same position is listed as "office manager" on the certified labor condition application. Only after such analysis is undertaken, can an objective conclusion be reached as to whether the proffered position is a specialty occupation within the meaning of both section 214(i)(1) of the Act and 8 C.F.R. 214.2(h).

The director has not made a meaningful determination as to whether the proffered position is a specialty occupation or whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to him to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.