



DA

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: EAC-01-086-51071 Office: Vermont Service Center

Date: **OCT 10 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 that 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 that 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 that 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the matter will be remanded for further consideration and action.

The petitioner is a convenience store franchise with four full-time and two part-time employees and a gross annual income of \$1,481,628. It seeks to employ the beneficiary as an accountant for a period of three years. The director denied the petition because the petitioner had not submitted a certification from the Department of Labor that a Form ETA 9035 Labor Condition Application (LCA) had been properly filed.

On appeal, counsel submits a certified Form ETA 9035 Labor Condition Application.

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 submitted a certified LCA and a statement that it will comply with the terms of the LCA. Therefore, the petitioner has overcome the basis for the denial of the petition.

The director has not determined whether the proffered position is a specialty occupation or whether the beneficiary qualifies to perform services in a specialty occupation. It is noted that the proffered position more closely resembles that of an accounting clerk or bookkeeper than it does that of an accountant. It is further noted that the record does not contain sufficient evidence to show that the beneficiary qualifies to perform services in a specialty occupation. The evaluator stated that the beneficiary received a three-year diploma in microbiology from Gujarat University in India. The evaluator found the beneficiary's foreign education equivalent to three years of undergraduate education in the United States. The evaluator further stated that the beneficiary's foreign education and four years and two months of

work experience as an accountant are equivalent to a bachelor's degree in accounting from a regionally accredited college or university in the United States. However, the record does not contain copies of the beneficiary's diploma from Gujarat University or her transcripts from that institution. Nor does the record contain sufficient evidence to show that the beneficiary has the equivalent of a bachelor's degree in accounting such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

Accordingly, the matter will be remanded to the director 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 the director 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.