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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: WAC-01-063-51215 Office: California Service Center

Date: OCT 22 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: SELF-REPRESENTED

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is an information technology business with 90 employees and a gross annual income of \$750,000. It seeks to employ the beneficiary as a programmer analyst for a period of three years. The director determined the petitioner, as the beneficiary's agent, had not provided employment contracts including a complete itinerary of services to be performed by the beneficiary. The director also determined that, without such contracts, the Service was unable to determine whether the petitioner had complied with the terms of the labor condition application.

On appeal, the petitioner's president submits additional information. The president had indicated that additional evidence would be submitted in support of the appeal on or before November 2, 2001. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

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 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. Information on the labor condition application indicates that the beneficiary will be employed in San Jose, California. On appeal, the petitioner's president states that the petitioner has multiple business locations and submits a lease for its office located at 181 Metro Drive, Suite 500, San Jose, California 95110. Information on Part 5 of the petition indicates that the beneficiary will work at the address noted on the said lease. Therefore, the petitioner has demonstrated that it has complied with the terms of the labor condition application.

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 although the credentials evaluator concluded that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in management information systems from an accredited college or university in the United States, the record contains no corroborating evidence to support the evaluator's claim, 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 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.