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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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DA

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536

[REDACTED]

JUN 24 2003

File: LIN-00-015-50930 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[REDACTED]

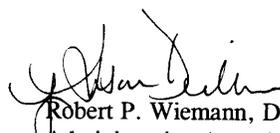
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO will be affirmed.

The petitioner is a software development and consulting business with approximately 18 employees and a gross annual income of \$75,000. It seeks to employ the beneficiary as a management analyst-financial/business for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel had provided additional information in support of the appeal.

The AAO dismissed the appeal reasoning that, although the proposed duties are computer-related, the beneficiary does not hold a computer-related baccalaureate degree or an equivalent thereof. The AAO also found, beyond the decision of the director, that the petitioner had not timely submitted a certified labor condition application.

On motion, counsel submits a new job description and states, in part:

In this Motion to Re-Open, the employer, Petitioner, hereby presents new and compelling evidence, in the form of a revised, focused job description, which is very much within the job title of a Management Analyst and is in fact, significantly less computer related, and much more focused on the Management, Business Analysis and Financial Analysis aspects.

The new job description is being presented because of the primary reason that the employer now wishes for the Beneficiary to perform different job duties. This is because it has taken so long to firstly adjudicate this present I-129 petition (which was initially filed in 1999), that some of the business needs of the employer have also changed, and with that, there are new job openings within the company, which although covered within the same Job Title and DOT classification of a Management Analyst-Financial/Business, have significantly revised job duties.

. . . .

Please also note that the INS policy memo has recently indicated that a Petitioner may file an H1 petition prior to the certification of an LCA so long as the LCA was filed with the U[.]S[.] Dept. Of Labor prior to the submission of the I-129 petition. . . .

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.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Generally, [the beneficiary] will be responsible for managing RDBMS projects using MS Access [sic] and Oracle Financial Products of Oracle Applications. [The beneficiary] will conduct computerized accounting. [The beneficiary] will develop financial MIS, financial analysis and systems integration using MS Access and Oracle. [The beneficiary] will conduct computerization of financial systems. [The beneficiary] will conduct the development and implementation of business in the field of ERP. [The beneficiary] will also develop ERP

(Enterprise Resource Planning) solutions for clients using customized software applications such as SAP and ABAP/4 (Finance & Controlling Module) to conduct organization mapping, customization and General Ledger implementation. [The beneficiary] will also analyze and design software for financial and business applications and create new programs or modify existing ones according to specific needs. [The beneficiary] will evaluate factors in each situation and develop new programs to promote and ensure operational efficiency and facilitate long-term usage.

On motion, counsel submits a new "Supplement to Form I-129" and the following revised description of duties:

Conduct analysis & development of management information systems for business management. Conduct project management analysis with a focus on impact and trend analysis. Develop programmatic/management documentation, provide program analysis assessing the status of the program/projects, financial analysis, cost/schedule analysis, conduct programmatic risk assessments and support special studies, and ad-hoc reporting requirements. Perform assessments supporting trend, impact, what-if analysis required by the customer, which would be tailored to meet the specific requirements of the project based on its current life cycle phase. Conduct ERP (Enterprise Resource Planning) and business implementation thru process business model development using SAP for manufacturing, engineering and production processes. Analyze business flow for mechanical and manufacturing processes and industries. Conduct requirements analysis, business process modeling, and solutions design and implementation planning for the mechanical engineering and manufacturing engineering industries.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required

by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner has not met any of the above requirements to demonstrate that the beneficiary is qualified to perform services in a specialty occupation.

Counsel's assertion that the petitioner now wishes for the beneficiary to perform different job duties, is noted. Although the new job description appears to contain job duties related to the position of a management analyst, the record is not persuasive that the proposed duties were not revised solely to make the petition approvable. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, 591-92 (BIA 1988).

In view of the foregoing, the petitioner has not presented any evidence to overcome the objections of the director and the AAO. For this reason, the petition may not be approved.

As the petitioner has not sufficiently established that the beneficiary is qualified to perform the duties of the specialty occupation, the petitioner's labor condition application need not be examined further in this proceeding.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not

demonstrated that the beneficiary meets the qualifications to perform services in a specialty occupation within the meaning of the regulations.

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.

ORDER: The previous decision of the AAO dated May 21, 2001, is affirmed.