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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

NOV 07 2003

FILE: EAC 02 120 52527 OFFICE: VERMONT SERVICE CENTER DATE:

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)

ON BEHALF OF PETITIONER:

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 Citizenship and Immigration Services (CIS) 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 Director of the Vermont Service Center denied the nonimmigrant visa petition and affirmed his decision in a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an import-export business that currently employs six persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as an assistant to the controller. The director denied the petition as failing to establish that the proffered position qualified as a specialty occupation. On the motion to reopen, director affirmed his denial on the same basis.

On appeal, counsel submits letters from him and the petitioner's president.

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 for the classification of qualified nonimmigrant 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 the term "specialty occupation" as an one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

In the Form I-129, the petitioner described the proffered position as "Assistant to Controller" and, for a description of the proposed duties, stated, "Assist in accounting work including accounts payable, accounts receivable, bank reconciliations, and monthly general ledger work." Subsequently, all of the petitioner filings

and Citizenship and Immigration Services (CIS) actions focused on the proffered position as primarily an accounts-related job.

In a letter accompanying the Form I-129, counsel repeated the proposed duties that were presented in that form.

In response to the director's request for additional evidence related to the specialty occupation issue, counsel provided a letter which, in asserting that the beneficiary would be performing professional-level duties, focused on the beneficiary's holding a foreign degree that had been evaluated as equivalent to a U.S. bachelor of science degree in business administration with a major in accounting and auditing.

In his denial of the petition for failure to qualify the proffered position as a specialty occupation, the director asserted, in part, that the evidence presented by the petitioner indicated that the proposed duties "appear to be those normally performed by a bookkeeper, not an accountant." In the motion to reopen, counsel's additional description of the proposed duties was consistent with the Form I-129's general description of a job involved with company accounts:

This job requires a minimum baccalaureate degree. As Assistant to Controller, [the petitioner] will help direct the preparation of financial reports that summarized and forecast the organization's financial position, such as income statements, balance sheets, and analysis of future earnings or expenses. He will also help oversee financial and accounting functions.

[He] will also assist directing the financial activities of the organization, and prepare reports, which summarize and forecast the company's position in the areas of income, expenses and earnings, based on past, present and expected operations. He shall likewise help establish, or recommend to management[,] economic objectives and policies for the group. As assistant to controller, [he] will help prepare the budget; help arrange for audits of company accounts; and help direct financial planning for the company accounts; and help direct financial planning [for] the company.

Continuing in the accounts-related vein of the proffered position, counsel also included in the motion: (1) a two-page "Job Description" of the petitioner's former job as a "senior controller" in the Philippines, and (2) Internet advertisements for assistant controller positions with substantial accounting responsibilities.

The director's decision on the motion continued the focus on the accounts-related nature of the proffered position. The director

stated, in part, that the petitioner had not dispelled his earlier conclusion that the proposed duties appeared to be those of a bookkeeper, which is not a specialty occupation.

Now, on appeal of the director's decision to affirm the denial of the petition, the petitioner attempts to modify the petition in two material respects, namely, the identity of the petitioner and the nature of the proffered position. Filed with the Form I-290B, which indicated that a separate brief would follow, is a letter from counsel, which states this information unrelated to what the petitioner had previously provided:

[The] [REDACTED] is filing an appeal in the above-entitled case because the petitioner does business across the globe and the company needs someone with skills and abilities to deal with different people and cultures as well. The company deals with Asian clients, requiring someone with exposure to Asian business, language and culture. Mr. [REDACTED] has unique language skills, being fluent in Filipino, which will help bridge the trade between China, the Philippines, and the U.S.A.

By letter dated August 29, 2002, counsel submitted a July 25, 2002 letter, on [REDACTED] letterhead, in which the same person who signed the Form I-129 as president of the petitioner identified as [REDACTED] now signs as the president of [REDACTED] Inc. This letter attributes the failure of the petition to a "mistake made with [the petitioner's] paper work." According to the letter, the petitioner should have been [REDACTED] which imports merchandise from overseas, and not the [REDACTED] which, although owned by [REDACTED] is not where the beneficiary would be employed.

The letter also describes a set of duties that are materially different from the accounts-related duties identified up to this point. According to the letter, the beneficiary would supervise a warehouse, and, in that position, would utilize his computer skills, ability to speak multiple languages, "A-1" knowledge of warehousing and inventory, and "his background in accounting skills."

CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). On appeal, a petitioner cannot materially change the identity of the petitioner or the proffered position's associated job responsibilities, whether to correct the petitioner's inadvertent filing errors or to conform to statutory and regulatory requirements. The petitioner must establish that the position offered to the beneficiary when the I-129 petition was filed

merits classification as a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

Here, counsel submits a new petition and job duties that are manifestly and materially different from those previously presented. Accordingly, the information presented on appeal is irrelevant to the petition properly before the AAO at this time, and it will not be considered.

We note that, in his letter regarding the appeal, the president of Kennedy International requests CIS to correct the petition to reflect the actual intent of that corporation at the time of filing. Such material changes to a filed petition for an immigration visa are beyond the authority of CIS. See 8 C.F.R. § 214.2(h)(2)(i)(E).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.