



U.S. Citizenship
and Immigration
Services

DA

[Redacted]

FILE: WAC 03 235 50298 Office: CALIFORNIA SERVICE CENTER Date: OCT 25 2004

IN RE: Petitioner: [Redacted]
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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent unwarranted
invasion of personal privacy

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DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and subsequently affirmed that decision after reconsideration upon the petitioner's motion. The service center director certified his decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The petitioner is a software consulting and development firm that seeks to employ the beneficiary as a market research analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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). The director denied the petition because the evidence failed to demonstrate that the petitioner had a bona fide specialty occupation position to offer the beneficiary.

On motion, the petitioner submitted copies of four DE-6 Quarterly Wage Reports and four of the beneficiary's monthly payroll summaries and earning statements. Counsel contended that Citizenship and Immigration Services (CIS) should have previously requested the submitted documents and should have afforded the petitioner sufficient opportunity to respond. Counsel presented no other evidence nor made any other claim on motion. The director granted the motion, reviewed the evidence, and affirmed his decision to deny the petition. The director then certified his decision to the AAO, notifying the petitioner that it had thirty days within which to submit a brief or written statement to the AAO. As of this date, the AAO has received no further documentation or written statements; thus, the record is complete.

In the request for evidence, the director had specifically asked for copies of the petitioner's Form DE-6 Quarterly Wage Reports for the previous four quarters. The director also requested all of the beneficiary's payroll summaries obtained while in H or L nonimmigrant status and the beneficiary's four previous monthly earning statements. In its response to the request for evidence, the petitioner submitted only one DE-6 Quarterly Wage Report and failed to provide the beneficiary's payroll summaries or earning statements for the previous four months. It must be noted that the regulations provide that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Nevertheless, the director considered the evidence on the record and found numerous unresolved, material inconsistencies between the DE-6 Quarterly Wage Reports provided and information entered on previous Forms I-129 filed on behalf of other beneficiaries. The director noted significant discrepancies between the wages of the petitioner's employees and their alleged salaries. He further noted an inconsistency in the total number of employees. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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). The discrepancies in the instant petition cast doubt on the reliability and sufficiency of the entire body of evidence on the record; thus, the director determined that the petitioner had failed to establish that the beneficiary was coming to the United States to perform services as required by the statute at section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On motion to reopen, the petitioner submitted the documentation that the director had already specifically requested. The petitioner's submission of such evidence does not satisfy the requirements of a motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3). Here, no evidence in the motion contains new facts that were previously unavailable; hence, the director found that the evidence submitted did not meet the requirements for a motion to reopen.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel's sole contention on motion is that before issuing a denial, CIS should have given the petitioner the opportunity to submit the wage reports, payroll summaries, and earning statements. Counsel provides no pertinent precedent decisions to establish that the director misinterpreted the evidence of record. Given that the director had already afforded the petitioner the chance to submit that exact documentation, it does not appear that counsel's statements meet the requirements for a motion to reconsider. Nevertheless, the director reconsidered the evidence on the record and found no basis for overturning the decision.

On motion, the petitioner failed to address the inconsistencies noted in the director's decision between the petitioner's payroll records and its underpayment of wages to the beneficiaries of previous nonimmigrant visa petitions. The AAO has thoroughly reviewed the record and agrees with the director's assessment of the reliability of the documentation in the current record. The inconsistencies in the record, which the director pointed out to the petitioner in his denial, cast doubt on the petitioner's portrayal of its own organization. Moreover, the petitioner failed to provide detailed information regarding its need for, or the exact role of, a market research analyst within its organizational structure. Neither counsel nor the petitioner provided any statements, information, or evidence on motion that would serve to clarify the discrepancies; thus, the AAO concurs with the director's denial of the petition. The petitioner failed to prove that the beneficiary would be coming to the United States to perform services as required by statute.

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 director's decision is affirmed. The petition is denied.