



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: WAC 04 007 52931 Office: CALIFORNIA SERVICE CENTER Date: SEP 3 0 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.

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Robert P. Wiemann, Director
Administrative Appeals Office

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**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and has certified his decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The petitioner is an architectural office that seeks to extend without change the current employment of the beneficiary as an architectural drafter. 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 material inconsistencies found in several documents submitted by the petitioner cast doubt on the bona fides of all the evidence on the record.

In his decision, the director noted that on the Form I-129B, the petitioner wrote that the beneficiary's hourly salary would be \$17.03 per hour, or \$35,429.30 per annum. On the Form ETA 9035E Labor Condition Application (LCA), the petitioner also wrote that the beneficiary's hourly rate of pay would be \$17.03. On both documents the petitioner indicated that the beneficiary would work full time. The director compared the rate of pay shown on the Form I-129B and the LCA to that found on the beneficiary's 2003 W-2 and earning summary, which was only \$21,800 for the year 2003. The director found that this discrepancy called into question all of the evidence submitted and prevented Citizenship and Immigration Services (CIS) from making any affirmative determination regarding the nature of the petitioner's organization. Consequently, the director denied the extension petition.

On June 10, 2004, the director notified counsel and the petitioner of the denial and concurrent certification to the AAO. The director advised the petitioner that it could submit a brief or written statement to the AAO within thirty days; however, as of this date, no brief or other information from the petitioner has been received. Thus, the record is complete.

The AAO agrees with the director's conclusion regarding the lack of reliability of the evidence on the record. As the director pointed out, 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. The petitioner bears the burden of reconciling any inconsistencies in the record by objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has presented no evidence or explanation to clarify the discrepancy between the beneficiary's promised salary and the actual amount received; thus, the AAO concurs with the director's denial of the petition.

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.