

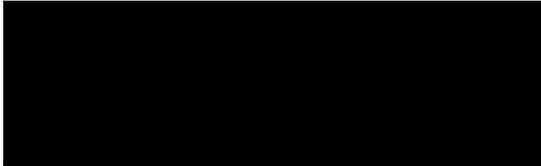
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U.S. Citizenship
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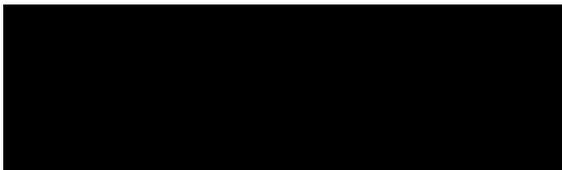
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FILE: WAC 03 188 50327 Office: CALIFORNIA SERVICE CENTER Date: JUL 11 2005

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:



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.

for *Michael T. Kelly*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides payroll, tax preparation, and consulting services. It seeks to employ the beneficiary as a financial manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 petitioner's labor condition application that is valid for the period of the intended employment was approved by the Department of Labor subsequent to the filing of the visa petition. On appeal, counsel states that an approved labor condition application was submitted at the time of the filing of the petition, but had expired at the time of the director's request for additional evidence. Counsel states further that the petitioner submitted a new labor condition application in response to the director's request for evidence.

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. . . .

Counsel's statement on appeal that an approved labor condition application was submitted at the time of the filing of the petition, but had expired at the time of the director's request for additional evidence, is noted. The record, however, contains no evidence in support of this statement. A review of the record finds that the petitioner submitted an expired labor condition application at the time of the filing of the instant petition on June 9, 2003. It is further noted that the validity date of this labor condition application, which is for an accountant position, not a financial manager position, appears to have been altered from October 1, 2000 – September 1, 2002, to October 1, 2000 – September 1, 2007. The record, however, contains no explanation for this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner subsequently provided a certified labor condition application for a "financial manager/supervisor," which is valid for the period of the intended employment. Nevertheless, that application was certified on November 13, 2003, a date subsequent to June 9, 2003, the filing date of the visa petition. Regulations at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) provide that *before filing a petition for H-1B classification in a specialty occupation*, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. (Emphasis added.) Since this has not occurred, it is concluded that the petition may not be approved. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the proffered position is a specialty occupation or that the beneficiary is qualified for a specialty occupation. As discussed above, 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). For these additional reasons, the petition may not be approved.

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 appeal is dismissed. The petition is denied.