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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]

Office: (CALIFORNIA SERVICE CENTER) [Redacted]

Date: MAY 18 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:
[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

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner provides residential homes for the elderly. It seeks to employ the beneficiary as a records management analyst. 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 beneficiary is not qualified to perform a specialty occupation. The director found further that the petitioner had not demonstrated that a bona fide position exists. On appeal, counsel submits a brief and additional evidence, including letters from the petitioner's president and owner.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a records management analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 28, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the

beneficiary would perform duties that entail: conducting an analysis of the existing records management systems to determine efficient and effective methods and operational procedures; determining timetables for transferring active records to archival storage or inactive status; reducing paper records to micrographic form; and destroying obsolete records. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in secretarial science for the proffered position.

The director found that the beneficiary is not qualified for a management analyst position because she does not hold a master's degree in a related field of study. A review of the duties described above, however, finds that the proffered position is that of a file clerk, and is not a management analyst position. In this case, the record contains an evaluation from a company that specializes in evaluating academic credentials indicating that the beneficiary's foreign bachelor's degree in commerce is equivalent to a bachelor's degree in secretarial science granted by regionally accredited U.S. colleges and universities. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not a specialty occupation. No evidence in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a file clerk job. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.