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FILE:



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CALIFORNIA SERVICE CENTER

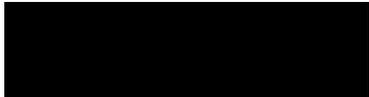


Date:

MAY 25 2005

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 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 Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion is granted, and the prior decision of the AAO is withdrawn. Upon consideration of the appeal, the appeal is sustained and the petition is approved.

The petitioner is an engineering, consulting, and construction services company. In order to employ the beneficiary as a management information systems (MIS) specialist, 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).

Counsel has submitted sufficient evidence on motion to overcome the grounds of the AAO's earlier summary dismissal of the appeal. Counsel has established that, prior to the AAO's decision, he had filed a brief that specifically identified alleged legal or factual error by the director. Accordingly, the AAO's prior decision is withdrawn and the AAO now issues a decision on the appeal.

The director denied the petition on the ground that the petitioner had failed to establish that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). The director stated:

The petitioner . . . seeks to secure the beneficiary's services as a MIS Specialist. The record contains [evidence] that the beneficiary has a Bachelor of Science degree in business administration. Business administration is a general term, including both professional and nonprofessional activities. A degree in business administration alone is insufficient to qualify the holder as the member of the professions or of a specialty occupation. A degree in business administration may be sufficient, if the academic course pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and that person is engaged, or is intended to engage, in that occupation. Matter of Ling, 13 I & N Dec. 35 (Reg. Comm. 1968). The petitioner has not shown that the academic course work pursued and the knowledge gained by the beneficiary were realistic prerequisites for the position.

On appeal, counsel asserts that "the petitioner by providing specific and detailed relationships between the coursework and professional job duties[,] has demonstrated that [the beneficiary's] coursework is indeed a realistic prerequisite for the position." The AAO agrees. The beneficiary's transcript designates the beneficiary's major as Management Information Systems; the courses identified by counsel on the transcript clearly support that designation; and counsel has correlated the coursework to the performance requirements of the proffered position, which does appear to be sufficiently specialized and complex to qualify as a specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained.

ORDER: The AAO's decision dated July 1, 2004 is withdrawn. The appeal is sustained. The petition is approved.