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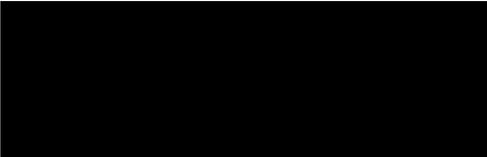
FILE: WAC 03 015 50481 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 2005

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

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 sustained. The petition will be approved.

The petitioner is a computer software consulting firm that seeks to employ the beneficiary as a computer programmer. 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 determined that the position offered to the beneficiary (a computer programmer) is a specialty occupation. The director further determined, however, that the petitioner did not demonstrate that it had H-1B caliber work available for the beneficiary during the three year time period sought by the petitioner in the Form I-129 petition, and the petition was not, therefore, approvable. On appeal the petitioner submits a brief indicating that the proffered position qualifies as a specialty occupation and that the record establishes that the petitioner will be the employer of the beneficiary with H-1B caliber employment available for him in the United States. The record contains sample contracts between the petitioner and various clients whereby the petitioner would provide computer programming personnel and other services under the terms of the contracts.

The director found that because the petitioner did not provide contracts where the beneficiary would be working, that it did not establish it would employ the beneficiary in a specialty occupation. The record establishes that the petitioner meets the definition of an employer under 8 C.F.R. § 214.2(h)(4)(ii), and is not an agent as defined in 8 C.F.R. § 214.2(h)(2)(i)(F). It provides computer consulting services including the services of computer programmers with responsibilities for analysis and design using Object Oriented Analysis design (OOAD) techniques, and development, testing, and implementation of software systems using C++, Java (J2EE), Visual C++, Oracle, DB2 and SQL on Unix (HP, Sun Solaris, AIX, IRIX) and Windows environments. The services provided include the creation of test plans and test cases, and the development of Web/Client Servers using JavaScript, JSP, JFC, HTML, XML and Web DB applications. The petitioner indicated that it did not pre-place the beneficiary with a specific work order, but that it would assign him based on its business exigencies. The submitted financial statements, tax returns and quarterly wage reports verify the economic viability of the company.

Agents provide placement of employees for organizations seeking manpower. The petitioner hires its employees and maintains an employer-employee relationship with them in that it retains the ability to hire, fire, pay or otherwise control their work. As such, the petitioner need not provide an itinerary of work or copies of contracts with its customers to sustain its claim. Pursuant to regulation, the petitioner must establish that the proffered position is a specialty occupation and that the beneficiary qualifies to perform the duties of that specialty occupation. As previously mentioned, the director determined in his decision of September 16, 2003, that the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge. Thus, the position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation. A credentials evaluation service determined that the beneficiary's foreign education was equivalent to a bachelor of science in engineering degree with a concentration in communications engineering awarded by regionally accredited colleges and universities in the United States. That degree is closely related to the duties to be performed by the beneficiary, and the record indicates that the beneficiary has past work

experience in this capacity. The beneficiary is, therefore, qualified to perform the duties of the offered specialty.

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.

ORDER: The appeal is sustained. The petition is approved.