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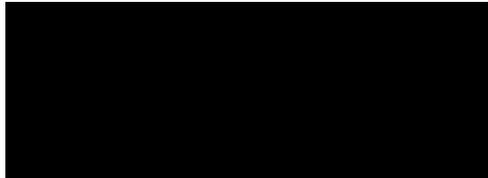


FILE: EAC 03 106 52599 Office: VERMONT SERVICE CENTER Date: NOV 17 2005

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider its previous decision. The motion is granted. The petition will be denied.

The petitioner is a computer software and website development company that seeks to employ the beneficiary as a marketing manager and to classify her 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).

A motion to reopen must state the new facts to be provided in the reopened proceeding, and it must be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The motion to reconsider must: 1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In its previous decision, dated June 2, 2004, the AAO dismissed the appeal and denied the petition on two independent grounds: 1) the petitioner failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and 2) the beneficiary is not qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). That decision is affirmed in part and withdrawn in part.

The AAO will first address the specialty occupation issue. In its motion, the petitioner presents no new facts and no supporting documentation regarding whether the proffered position is a specialty occupation. The petitioner simply asserts that the AAO has changed its policy regarding marketing manager positions and that the AAO has not given affected parties notice of this change in policy. The petitioner did not offer any pertinent precedent decisions to support this assertion. The unsupported statements of counsel on appeal or in a motion are not evidence and are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Thus, the AAO's previous determination that the proffered position is not a specialty occupation is affirmed.

Next, the AAO turns to the issue of the beneficiary's qualifications. In its motion to reopen, the petitioner asserts that the beneficiary qualifies for the proffered position and submits a more detailed credentials analysis/evaluation report to supplement the one previously submitted with the original petition. The credentials evaluation report indicates that the beneficiary's three years of university studies in economics is the equivalent to a U.S. baccalaureate degree in economics. The AAO does not accept this portion of the evaluation. A United States bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). The record establishes that the beneficiary obtained a bachelor's degree from a three-year university program at the University of Delhi, a two-year post graduate diploma in business management from the Fore School of Management, and a one-year diploma in software technology and systems management from NIIT. Her degree from the University of Delhi, by itself, is not the equivalent of a four-year U.S. bachelor's degree. Those three years are equivalent to three years of university studies in the United States. The revised credentials evaluation indicates that the beneficiary's post-graduate education was at academic institutions in India. The evaluation establishes that her two years of study at Fore and one year at NIIT, together with the three years at the University of Delhi, are equivalent to a U.S. bachelor's degree with a major in business management and a concentration in information technology.

Based on the revised evaluation, the AAO is satisfied that the beneficiary's schooling is equivalent to a bachelor's degree with a major in business management and a concentration in information technology and finds that the beneficiary is qualified to perform the duties of a specialty occupation. The *Handbook* indicates that: "[a] wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable." (page 24). Therefore, the AAO's previous determination that the beneficiary is not qualified for the position is withdrawn.

The petitioner has overcome the AAO's previous concerns regarding the beneficiary's qualifications. The petition may not be approved, however, as the proffered position is not a specialty occupation.

The burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is granted. The previous decision of the AAO, dated June 2, 2004, is affirmed in part and withdrawn in part. The petition is denied.