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U.S. Citizenship
and Immigration
Services

[Redacted]

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FILE: WAC 03 147 50546 Office: CALIFORNIA SERVICE CENTER Date: AUG 14 2006

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]

PUBLIC COPY

INSTRUCTIONS:

Attached is a reopening of the petition and a request for evidence relating to the above proceeding. Pursuant to federal regulations at 8 C.F.R. § 103.2(b)(8), you are allowed 12 weeks from the date of this notice to respond to the above address. This same regulatory section states that additional time may not be granted. All evidence submitted in response to a request for evidence must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11).

Failure to respond to this notice will be considered to be an abandonment of the petition. 8 C.F.R. § 103.2(b)(13).

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On April 10, 2003, the petitioner filed a Form I-129 seeking to employ the beneficiary, who has been previously approved for H-1B status based on a petition filed by another employer, as a structural steel detailer 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 of the California Service Center denied the petition and the petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on April 28, 2006. Subsequently, the petitioner and the beneficiary filed a complaint in the U.S. District Court for the Central District of California seeking declaratory relief requiring Citizenship and Immigration Services (CIS) to approve the beneficiary's H-1B petition. *Global Fabricators and Israel G. Cruz v. Alberto Gonzales and Michael Chertoff, et al.*, CV-06-3959 AHM (JWJx) (filed June 23, 2006). Upon review, the AAO, on its own motion, reopens the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii). Accordingly, it issues this notice and request for evidence.

In reviewing the record of proceeding, the AAO has identified several areas in which additional information is required for the petition to be given further consideration. The purpose of this letter is to advise the petitioner of the issues that must be addressed and to afford it an opportunity to provide additional information prior to the AAO's issuance of a new decision.

Prior Approval of H-1B Status

On appeal, counsel indicates that CIS previously approved an H-1B petition filed on behalf of the beneficiary by the petitioner for the same employment described in the instant petition and that the beneficiary has been working for the petitioner for the past three years in this capacity. He contends that in filing the instant petition the petitioner simply seeks to extend its employment of the beneficiary and that CIS' denial of the petition violates its own regulations and policy regarding the readjudication of previously approved H-1B petitions where there has been no material change in the underlying facts.¹

The AAO finds the record to contain a copy of a Form I-797B approval notice indicating that the beneficiary was previously awarded H-1B status based on a petition filed by another employer. It offers no evidence to support counsel's claim that the petitioner in the instant case previously filed a Form I-129 for the beneficiary. Neither does a review of CIS records indicate that the beneficiary was previously employed by the petitioner in H-1B status. Accordingly, the AAO asks that the petitioner submit proof of its previous H-1B employment of the beneficiary.

Nature of the Position

Although counsel contends that the proffered position is similar to that of an architect, the petitioner entered the occupational code of "017" on the certified Labor Condition Application (LCA) submitted at the time of

¹ Memorandum from William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3 (April 23, 2004).

filing. The “017” designation is the occupational code for drafters; the code for architectural occupations is “001.” *See* Appendix 1 to Form ETA 9035CP, Labor Condition Application, Three-Digit Occupational Groups. In response to the director’s request for evidence, the petitioner submitted newspaper listings for the proffered position, which advertise it as a civil engineering position, and four Internet job announcements for draftsmen and mechanical engineers, describing these positions as similar to the offered employment. The occupational code used on the LCA, and the newspaper and Internet listings undermine the petitioner’s contention that it is seeking the beneficiary’s services to perform the duties of an architect. The AAO asks that the petitioner resolve these inconsistencies in its characterization of the offered employment.

Duties of the Position

On appeal, counsel states that the proffered position of senior structural steel detailer is closely aligned to the occupation of architect because “it primarily involves pre-design and design services in all phases of development, from the initial discussion through the entire project.” While the record does not indicate that the petitioner, either at the time of filing or in response to the director’s request for evidence, has listed any pre-design or design services among the duties that would be performed by the beneficiary, the AAO, nevertheless, asks that the petitioner provide a description of the pre-design and design services referenced by counsel on appeal. In that description, the petitioner should also identify the type of “parts of machines or structures” for which, counsel states, the beneficiary would “draft detailed drawings . . . from rough or general design drawings.”

The AAO asks that the petitioner provide a description of the architectural services it provides to the contractors that make up its primary customer base, as well as its other clients. Further, as counsel indicates that the beneficiary currently performs pre-design and design services for the petitioner, the petitioner is requested to provide a description of some of the specific pre-design and design assignments completed by the beneficiary.²

Petitioner’s Hiring Practices

On appeal, counsel states that the petitioner requires all structural steel detailers in its engineering department to hold at least a baccalaureate degree and that all members of its entire engineering staff possess four-year college degrees. As proof of these claims, counsel submits copies of documents he states are related to two of the petitioner’s detailers – an “individual experience record” or resume which indicates that the person named holds a degree in civil engineering from the Far Eastern University in The Philippines, and a diploma in civil engineering and academic transcripts for another individual, issued by the National University in The Philippines. He also notes that the petitioner’s prior employment of the beneficiary serves as proof of its degree requirement. However, as indicated in the AAO’s dismissal of the instant petition, this information is insufficient to establish the beneficiary’s normal hiring practices. Moreover, the newspaper and online

² Pre-design and design services of the type indicated by counsel are not normally provided by steel fabrication businesses, as fabricators typically enter the building process only after a building contract has been awarded. Pre-design and design activities, as well as the preparation of construction documents, occur prior to the award of such a contract.

advertisements for the proffered position, as well as the position contract, which describe the duties and competencies of a senior detailer, do not support the petitioner's claims regarding its normal hiring practices for the position. None of this documentation indicates that applicants for a senior detailer position must have at least a baccalaureate degree in architecture, engineering, mathematics or computer design to qualify for employment with the petitioner.

If the petitioner is to demonstrate that it employs only degreed individuals in its engineering department, the AAO asks for documentation that establishes the number, identities and specific responsibilities of the employees in that department and the degrees held by each. Documentation of the employees' degrees should include evidence that establishes them as the equivalent of at least a U.S. baccalaureate degree in a field directly related to their employment.

Pursuant to federal regulations at 8 C.F.R. § 103.2(b)(8), the petitioner is allowed 12 weeks from the date of this notice to respond to the AAO and additional time may not be granted. All evidence submitted in response to a request for evidence must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11). If the petitioner's response does not establish that the petition was approvable at the time it was filed, then the petition cannot be approved. 8 C.F.R. § 103.2(b)(12).

After the 12-week period, the AAO will prepare and issue a new appellate decision, taking into account all of the evidence of the record, including the new and additional evidence submitted in response to this notice.