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AUG 21 2006

FILE: WAC 04 038 50295 Office: CALIFORNIA SERVICE CENTER Date:

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:



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INSTRUCTIONS:

Attached is 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 November 24, 2003, the petitioner filed Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to employ the beneficiary as an accountant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The California Service Center director denied the petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on March 1, 2006. Subsequently, the petitioner filed a complaint in the U.S. District Court for the Central District of California seeking declaratory and injunctive relief requiring U.S. Citizenship and Immigration Services (USCIS) to grant the H-1B petition. *Lunex Corporation and Connie Guerrero v. Christina Poulos, et al.*, CV06-3281 (May 26, 2006).

In reviewing the record, the AAO has determined that additional information is required before the petition can be given further consideration. Therefore, the AAO reopens the proceeding on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). This letter advises the petitioner of the specific areas in which additional information is required, and it offers the petitioner the opportunity to provide the requested information prior to a final determination by the AAO.

Focus of the Request for Additional Information

To date counsel and the petitioner have relied upon the similarity between generalized terms it uses to describe the proffered position and terms that the Department of Labor's *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)* use to describe the occupational category of accountants.

However, as indicated in the AAO decision, not all accountant positions require a four-year degree in accounting.

Furthermore, qualification of a position as a specialty occupation is not determined by how closely descriptions of the position approximate descriptions in the *Handbook* or *DOT*. Rather, specialty occupation status must be substantiated by evidence of record about the actual performance requirements of that particular position in the context of the petitioner's particular business. In consonance with section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), for an accountant position, the evidence must establish that the actual performance requires the theoretical application of a body of highly specialized accounting knowledge and the attainment of at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

In describing the position and its duties, the petitioner has provided only generalized statements about duties that are generic to occupations in the accounting field; these statements do not illuminate the actual work to be performed in the particular position that is the subject of the petition. For instance, the petitioner states that the accountant will prepare "financial statements from the point of view of stockholders, tax authorities, regulatory agencies, and creditors" (page 1 of the petitioner's October 8, 2003 letter supporting the petition) and that the accountant "will formulate budgeting proposals" and perform allied work such as analysis of records, estimation of future expenditures "applying the theory of cost-benefit analysis" (page 2 of the letter). However, the petitioner provides no substantive information about the content of the financial statements and budget proposals or about elements of the petitioner's operations and financial structure that these work products are to assess.

This request provides the petitioner the opportunity to provide evidence to substantiate that the actual performance requirements of the proffered position require the accounting knowledge acquired by at least a bachelor's degree, or the equivalent, in accounting or a related specialty.

Nature of the Petitioner's Business

The Form I-129 states that the petitioner is a "Telecommunications firm [specializing] in cellular phones and phone cards distribution," was founded in 2001, and has ten employees and additional "outside independent sales representatives." The petitioner's October 8, 2003 letter, submitted with the Form I-129, offered little additional information with regard to the petitioner's business operations. Accordingly, the AAO requests that the petitioner supplement the record with the following:

- Identification - by name and type of business - of all other businesses that maintain a business address or conduct business at the petitioner's office address.
- Certified DE-6 quarterly wage reports for the last eight quarters, with a list identifying the positions and duties of each of the petitioner's employees. The list should include any positions held and duties performed by the petitioner's employees that relate to business other than the distribution of cellular phones and phone cards which was described as the petitioner's business on the Form I-129 and documents submitted in support of the petition.
- The reason for the petitioner's reporting to the State of California Economic Development Division that it had no employees for the first quarter of 2006.
- Documentation to establish whether the petitioner operates as a direct agent, dealer, or reseller of the phone products it distributes.
- Copies of the contracts and licenses under which the petitioner is authorized to sell its phone products.
- Evidence that supports its assertion that it is a publicly held firm, to include documentation establishing the date that it went public.
- A copy of the petitioner's lease for office space at its current location.
- A copy of the petitioner's original incorporation papers, and copies of its filings to register to do business as a distributor of cellular phones and phone cards.
- Copies of invoices and other records of business transactions that show the type(s) of business in which the petitioner is engaged.
- Identification of the beneficiary's current position and employer.
- As checks of relevant California data bases indicate that the petitioner is registered as a real estate company, explanations of why the petitioner is registered as a real estate company and

why it has failed to notify the State of California regarding the change of business operations to distribution of cellular phones and phone cards.

The Petitioner's Income and Growth

The petition and its supporting documents and the brief on appeal assert that: (1) the petitioner's gross receipts for reporting year 2002 exceeded \$5,000,000; (2) it has a projected gross income of \$28,000,000 for 2003; and (3) the petitioner "continues to experience growth at phenomenal and exponential rates." The petitioner's October 8, 2003 letter of support states: "The increasing volume of our financial transactions prompted our decision to seek the services of [the beneficiary] as an Accountant."

To provide the petitioner the opportunity to substantiate these assertions, the AAO requests copies of:

- All of the petitioner's Form 1120 and other federal tax returns for the years 2002 through 2005, with all related schedules and tables; and/or
- The petitioner's complete audited financial statements, with supporting details, for the years 2002 through 2005.

Substantive Information about the Matters that the Accountant Would Address

As indicated in the AAO's decision and in the preamble to this request, the duties listed by counsel on appeal do not relate to substantive work that the accountant would actually perform with regard to the particular business matters of the petitioner. Accordingly, the petitioner is requested to provide:

1. A concrete description of the substantive work that the duties would entail in relation to the petitioner's particular business operations;
2. Concrete descriptions of the following items (from the appeal brief) as they relate specifically to the petitioner's own particular business structure and operations:
 - The "financial information" that the accountant would compile and analyze; and
 - The "financial statements" and "other accounting reports" to be prepared "from the point of view of stockholders, tax authorities, regulatory agencies, and creditors."
3. Copies of any reports or other documents prepared by the petitioner's previous accountant[s] that the petitioner wishes to offer; and
4. Identification of the specific regulatory agencies for which the petitioner provides reports, and identification of each type of report provided to those agencies.

The Petitioner's Degree Requirement for the Proffered Position

According to counsel's statement at part 3 of the Form I-290B, "The evidence submitted clearly established that [the petitioner] requires its accountant(s) to be possessed of a Bachelor's Degree." However, the only support for this assertion is the statement in the January 8, 2004 letter of the petitioner's former counsel that the last employee who held the position "is a degree holder." Likewise, with regard to the chain of supervision above the accountant, the organizational chart states that the CFO and Accounting Manager hold bachelor's degrees; but the chart does not identify the major or areas of concentration of those degrees, and the record contains no evidence of the degrees.

Accordingly, the AAO requests that the petitioner substantiate the degrees held by providing:

- The names and periods of employment of each person that the petitioner hired as its accountant, CFO, and accounting manager;
- The specific degree held by each accountant, CFO, and accounting manager, including the level (associate's, bachelor's, master's), academic major or area of concentration, date awarded, and the name and location of the academic institution that awarded the degree; and
- A copy of each diploma.

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

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.