



U.S. Citizenship  
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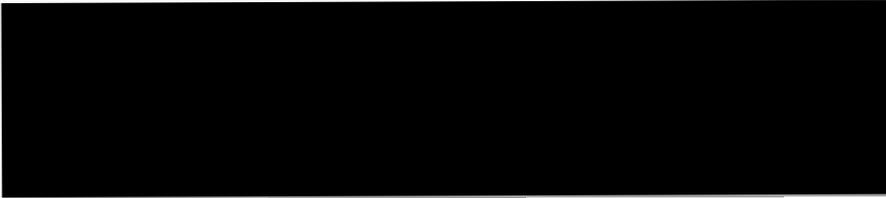
FILE: WAC 04 081 53164 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2006

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a corporation that operates a skilled nursing and sub-acute facility that seeks to employ the beneficiary as a social services and family liaison supervisor. The petitioner, therefore, 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 denied the petition because the evidence does not establish that the petitioner qualifies as a United States employer or agent. On appeal, counsel submits a brief and additional documentation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner is seeking the beneficiary's services as a social services and family liaison supervisor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to

this evidence, the beneficiary would perform duties that entail: helping patients and family through individual or group conferences to understand, accept and follow medical recommendations upon intake; serving as advocate for patients who do not have a family member or a responsible party representing them; counseling independent and alert patients, as to their rights and/or other needs they may have (40% of time); serving as family liaison with the hospital staff; aiding in solving problems and accomplishing care plan goals; assisting with smooth transition upon admission and intake (10% of time); assisting families and the administration in finding the appropriate framework for continued post-release care (15% of time); working in collaboration with health care team to inform them of significant underlying social factors that affect each patient under their care (10% of time); liaisons with adult protective services, ombudsman, and other social service agencies upon admission or at time of crisis (as needed); training and supporting all staff on social services regulations and procedures upon intake and release (10% of time); and participating in team intake/admission of patients (15% of time). The petitioner stated that the position requires a bachelor's degree in social work, psychology or other behavioral sciences with relevant coursework.

On or about May 11, 2004, the director issued a request for evidence that the proffered position is a specialty occupation. The petitioner responded with a detailed explanation asserting that the proffered position is a specialty occupation. The petitioner stated that the position is one of social services in a skilled nursing facility and not social work. On or about August 27, 2004, the director issued a second request for evidence for information regarding the beneficiary's qualifications. The director requested evidence to substantiate the information provided on the Form I-129. The director requested copies of the Form DE-6; quarterly wage reports; petitioner's organizational chart, including all the divisions of the company and to identify the proffered position in the chart; federal income tax returns for the year 2003, certified by the internal revenue service; business licenses; company profile; photographs of business premises; lease agreement; floor plan; state income tax returns; Form 941 quarterly wage reports; and a payroll summary.

In response, the petitioner provided a company brochure, photographs of the nursing facility, and copies of: the beneficiary's transcripts, the petitioner's organizational chart, the petitioner's business license, the petitioner's federal income tax returns for 2001, 2002, and 2003; the petitioner's mortgage statement; the petitioner's floor plan; the petitioner's quarterly wage report; the petitioner's payroll summary indicating 372 employees; and information establishing the beneficiary's previous H-1B status.

The director noted that the petitioner claimed to operate as [REDACTED] located at 1350 [REDACTED] and submitted tax returns from [REDACTED] and its subsidiaries located at [REDACTED]. The director found that the petitioner provided misrepresentation through the inconsistent and conflicting record. The director found that the reliability of all of the evidence provided with the present petition is in question and is insufficient to establish eligibility for the benefit sought. The director noted that the petitioner was requested to submit proof of business conducted. The director found that the petitioner did not submit all of the requested evidence and thereby precluded the director from verifying material information on the Form I-129 and that the petitioner "engaged in the business of investment firm."

On appeal counsel asserts that the record is true and correct and that the documents submitted into the record consistently support the representations made on the Form I-129. Counsel states that [REDACTED] is a DBA of [REDACTED], which is a wholly owned subsidiary of [REDACTED]. Counsel asserts that the previously submitted evidence such as the petitioner's SEC annual report and federal tax returns clearly show the legal and organizational relationship between these two companies. Counsel notes that the director stated, "Therefore,

without evidence to show that the petitioner engages in the business of investment firm, the beneficiary will be entering the United States to be employed in other than a specialty occupation.”

Counsel also refers to a memorandum issued by the CIS Associate Director for Operations as support of his assertions that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of a specialty occupation because the beneficiary had previously been approved for H-1B status. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the proffered position and the beneficiary’s qualifications as established in the prior case were similar to the position in the instant petition.

Counsel’s interpretation of the significance of the approval of the prior petition filed by another petitioner on behalf of this beneficiary is incorrect. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

As discussed below, the AAO finds that the petitioner has overcome the grounds on which the director based the denial. For this reason, the director’s will be withdrawn. However, the petition shall be remanded to the director for his adjudication of the merits of this petition.

The AAO first turns to the question as to whether the record of proceeding contains sufficient reliable evidence that the petitioner is a United States employer that would actually employ the beneficiary.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

On appeal, counsel refers to information that was previously provided to the director in response to the request for evidence. The petitioner provided a business license tax certificate for [REDACTED] located at [REDACTED] Colton CA 92324; the Form 1120 U.S. Corporation Income Tax Return for [REDACTED] and Subsidiaries for tax year 2001; the Form 7004 Application for Automatic Extension of Time to File Corporation Income Tax Return for tax year 2001 which includes the name and address of each member of the affiliated group: [REDACTED] of Placerville, [REDACTED] and [REDACTED]. All four members of the

affiliated group had individual employer ID numbers and were listed at Interwest [REDACTED] address of [REDACTED] Fort Worth, Texas. The petitioner also submitted a Form 851 Affiliations Schedule for the tax year ending December 31, 2002 listing [REDACTED] Inc. as a subsidiary corporation. The petitioner submitted a copy of notes to consolidated financial statements for [REDACTED] indicating that the company operates an acute care facility in Colton, California, the location of the petitioner. The petitioner provided an independent auditor's report on internal control from [REDACTED] and [REDACTED], dated March 19 2004, addressed to the shareholder [REDACTED] a mortgage statement for [REDACTED] c. Inc. addressed to the person who is the administrator of the petitioning nursing facility, at [REDACTED] Colton, CA, which is the petitioner's address. This document notes a property name of [REDACTED] San Bernardino, CA. The petitioner submitted Form 941 Quarterly Wage Report for [REDACTED] for tax year 2004 tax ID number [REDACTED] Tax Form DE 166 Magnetic Media-Submittal Sheet Quarterly wage and withholding information for [REDACTED] located at [REDACTED] Colton, CA with tax ID number [REDACTED] dated 9/30/04; and Form W-3 for 2003 for [REDACTED] with a tax ID number of [REDACTED]. The petitioner submitted a Form 10-K Annual report submitted to the Securities and Exchange Commission for [REDACTED] which indicates that it owns and operates a 156 bed skilled nursing home in Colton, California.

Upon review of the record, the AAO finds that the petitioner satisfactorily explained that the petitioner is a DBA ("doing business as" entity) of [REDACTED] which is a wholly owned subsidiary of [REDACTED] and that the petitioner is found to be an employer pursuant to 8 C.F.R. § 214.2(h)(4)(ii). The documentation submitted into the record and the information on the Form I-129 are consistent and indicative that the petitioner would be an employer of the beneficiary if the petition is granted. Therefore, the director's decision shall be withdrawn.

However, the petitioner may still not be approved at this time. The matter will be remanded for the entry of a new decision addressing the merits of the petition, that is, as to whether the proffered position is a specialty occupation and, if so, whether the beneficiary is qualified to serve therein. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform the duties of the specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's December 10, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.