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U.S. Citizenship
and Immigration
Services

D2

FILE: WAC 04 086 50611 Office: CALIFORNIA SERVICE CENTER Date: MAY 16 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:

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 February 4, 2004, the petitioner filed a 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director of the California Service Center denied the petition on April 21, 2004 and the petitioner appealed his decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on August 19, 2005. Subsequently, the petitioner 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. *Up Date Fabric II Corp. and Rodelia Gonzales v. U.S. Citizenship and Immigration Services and U.S. Department of Homeland Security*, CV-06-01411 RSWL (filed March 7, 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.

Nature of the Position

In its January 19, 2004 letter of support, the petitioner provided a list of the proffered position's duties that outlines the type of work typically performed by accountants, rather than the specific tasks to be performed by the beneficiary in relation to the petitioner's fabric wholesale business.¹ This generalized description of the proffered position undermines the petitioner's ability to establish the proffered position as employment requiring a degreed accountant. CIS must examine the ultimate employment of the alien to determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

To ensure a full understanding of the nature of the duties to be performed by the beneficiary in the proffered position, the AAO requests the submission of a detailed description of the tasks, specific to the petitioner's wholesale business that would be performed by the beneficiary on a day-to-day basis. In providing this description, the petitioner should also explain how the proffered position's duties relate to those performed by the part-time H-1B accountant, [REDACTED] currently listed on its organizational chart. This explanation should also include a description of the day-to-day tasks performed by [REDACTED]

The AAO notes that, on appeal, counsel described [REDACTED] as a junior accountant, maintaining accounting records in the form of preparing all invoices and checks, following up on collections of receivables and assisting in the preparation of tax returns.² However, the petitioner's description of [REDACTED] duties in the initial petition it filed on her behalf (WAC 01 215 53152) and its subsequent petition to extend her H-1B employment (WAC 04 194 50837) outline the same accounting duties as those listed in the petitioner's

¹ This identical description is also found in two other accountant cases (WAC 02 204 54220; WAC 04 210 51261) now before the AAO, filed by different employers but represented by the same counsel.

² The list of the employee duties and responsibilities accompanying the petitioner's organizational chart also identifies [REDACTED] as performing the duties described by counsel as those of a junior accountant.

January 19, 2004 letter in support of the instant petition. Based on the petitioner's representations in these prior H-1B filings, the proffered position may not be distinguished from _____ by virtue of its analytical, reporting, performance evaluation, cost management and recording components.

Business Expansion

In response to the director's request for evidence, the petitioner indicated that it required the services of a second part-time accountant as the result of rapid growth that has led to a "need for accurate financial reporting and strong record keeping procedures." Although the petitioner submitted copies of its 2001 and 2002 tax returns, it did not describe, nor otherwise document, the growth to which it referred. As a result, the AAO seeks a description, as well as related evidence, of the type/extent of the growth the petitioner has experienced and the effect of this growth on its financial operations.

Expert Opinions

The record contains two expert opinions – one from an accounting and information systems professor from California State University at Northridge and the second from the head of a California CPA firm. Both state that they have reviewed the duties of the proffered position as described in the petitioner's January 19, 2004 letter of support to reach their conclusions. However, as the description on which they have relied outlines general accounting employment rather than the specific tasks to be performed by the beneficiary, these opinions are of little evidentiary value in establishing the nature of the proffered position.³ Their utility is further undermined by the unanswered questions regarding the duties of the proffered position in relation to those of the petitioner's existing accountant. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 792 (Comm. 1988).

If the petitioner wishes, it may submit new or revised expert opinions that relate to its description of the proffered position's day-to-day duties.

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).

³ The AAO notes the similarity in language between these expert opinions and those submitted by another petitioner seeking a degreed accountant (WAC 04 210 51261) and represented by the same counsel. In the case of the letter provided by the head of the CPA firm, _____ analysis of the duties of the proffered position appears identical to that provided in his letter regarding the duties of an accounting position sought by another wholesale business. The letters' identical language raises concerns regarding the extent of the review conducted in support of these expert opinions.

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Reopening and Request for Evidence

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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.