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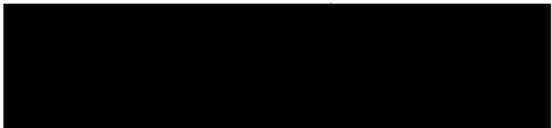
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FILE: EAC 05 166 53982 Office: VERMONT SERVICE CENTER Date: DEC 20 2007

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:

SELF-REPRESENTED

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, Chief  
Administrative Appeals Office

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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a computer consulting company that provides computer technology solutions including systems integration, network design, and consulting and custom software solutions. The petitioner indicated on the Form I-129 that it employed 14 personnel and had a gross annual income of approximately \$600,000. The petitioner seeks to employ the beneficiary as a programmer analyst. Accordingly, the petitioner 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 record includes: (1) the Form I-129 filed May 20, 2005 and supporting documents; (2) the director's July 11, 2005 request for further evidence (RFE); (3) the petitioner's October 5, 2005 response to the director's RFE; (4) the director's January 11, 2006 denial decision; and (5) the Form I-290B and documents in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On January 11, 2006, the director denied the petition determining: (1) that the petitioner's indication that the minimum requirement to perform the duties of the proffered position required a bachelor's degree in mathematics, accounting, statistics, computer science, or engineering (five distinct and unrelated fields of study) necessitated the conclusion that the position is not a specialty occupation; and (2) that the beneficiary's bachelor's degree from Osmania University and post graduate diploma in computer applications had been evaluated as the equivalent of a bachelor's and master's degree in business administration, degrees unrelated to the field of computer science, thus the beneficiary is not qualified to perform the duties of a specialty occupation.

Upon review of the decision in this matter, the AAO observes the director made numerous factual errors in the denial decision. For example:

The director incorrectly states that the petition in this matter was filed September 1, 2004. The petition was date-stamped as filed May 20, 2005;

The director indicates that the proffered position is for a programmer analyst position and incorrectly identifies the annual salary of the position as \$52,000. The Form I-129 and the accompanying Labor Condition Application (LCA), indicate the proffered position is for a programmer analyst at the annual salary of \$42,000.

The director incorrectly identifies the proffered position as a systems analyst position when determining that it is insufficient for a company to require their "systems analysts" to possess a bachelor's degree; and

The director incorrectly identifies the university the beneficiary attended, as well as incorrectly indicating the submitted evaluation concluded the beneficiary had obtained the equivalent of a bachelor's and master's degree in business administration. The record

contains a copy of the beneficiary's diploma issued from Shivaji University on February 5, 2004, awarding the beneficiary a bachelor of engineering, information technology degree. The record also contains copies of the beneficiary's transcripts for eight semesters of study. The May 18, 2005 evaluation reports that the beneficiary's foreign academic experience is equivalent to a bachelor's degree in computer information technology from an accredited university in the United States.

The AAO finds that the petitioner has established the beneficiary's qualifications to perform the duties of a specialty occupation based on the evidence of record.

The petition may not be approved, however, as the record does not contain sufficient evidence to establish the proffered position in this matter is a specialty occupation. The record suggests that the petitioner is an employment contractor. Although the record identifies a particular project the beneficiary would be working on, it is unclear whether the project is an in-house project or a third party's project. The AAO notes further that the petitioner provides a general overview of the beneficiary's duties for the proposed project and that the overview is insufficient to determine the scope of the beneficiary's duties and thus whether the duties require the theoretical and practical application of a body of highly specialized knowledge. It is not possible to discern from the description provided that the beneficiary will be expected to provide computer-programming services at a level commensurate with that required of an individual with a bachelor's degree in a specific discipline.

The AAO notes that the court in *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000) held that for the purpose of determining whether a proffered position is a specialty occupation, a petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.

When a petitioner is an employment contractor, the entity ultimately employing the alien or using the alien's services must submit a detailed job description of the duties that the alien will perform and the qualifications that are required to perform the job duties. From this evidence, Citizenship and Immigration Services (CIS) will determine whether the duties require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, or its equivalent, in the specific specialty as the minimum for entry into the occupation as required by the Act.

As the record does not sufficiently detail the proposed duties of the proffered position and whether the duties are for a third party, the petition will not be approved; as the director's decision does not correctly identify the position and provide an accurate analysis of the duties of the position, the matter will be remanded for the entry of a new decision, based on the evidence of record as it relates to the regulatory requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's January 11, 2006 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.