



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



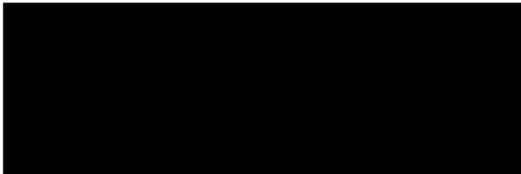
D2

FILE: WAC 05 221 52692 Office: CALIFORNIA SERVICE CENTER Date: SEP 25 2007

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:



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 of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an import, export, wholesale, and distribution business that seeks to employ the beneficiary as a cost accountant. 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 beneficiary is not qualified to perform a specialty occupation. The director also found that the beneficiary is not eligible for a change of nonimmigrant status because she had violated her F-1 nonimmigrant status.

On the I-290B, signed by counsel on July 10, 2006, counsel checked the block indicating that he would be sending a brief and/or evidence to the AAO within 30 days. The AAO sent a fax to counsel on July 30, 2007 informing counsel that no separate brief and/or evidence was received, to confirm whether or not he had sent anything else in this matter, and as a courtesy, providing him with five days to respond. Counsel was instructed to submit a copy of any timely filed additional evidence and/or brief along with evidence of the date it was originally filed with the AAO. On August 2, 2007 counsel mailed a packet of additional evidence; however, no evidence of the original filing date was included. Although the petitioner has not established that the materials were timely filed, the submission will be considered.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's statement and additional materials submitted on August 2, 2007. The AAO reviewed the record in its entirety before reaching its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner is seeking the beneficiary's services as a cost accountant. The petitioner's office manager indicated in her July 26, 2005 letter that the beneficiary is a qualified candidate for the job because she possesses a bachelor's degree in international studies from the University of California, Irvine, and also attended the University of California, Los Angeles. The petitioner's officer manager also indicated that the beneficiary's coursework includes ten accounting-related courses.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's U.S. degree in international studies did not qualify her for a cost accountant position. On appeal, counsel states, in part, that the petitioner and the beneficiary were not accorded due process in order to furnish additional documents pertaining to the beneficiary's qualifications.

Although the respondents argue that their rights to procedural due process were violated, they have not shown that any violation of the regulations resulted in "substantial prejudice" to them. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The respondents have fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the director denied the petition. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulation. Accordingly, the petitioner's claim is without merit.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in an accounting-related field. The beneficiary holds a U.S. bachelor's degree in international studies with a minor in conflict resolution. The beneficiary also has taken 44 credits in accounting-related courses at the University of California, Los Angeles, and 16 credits in accounting-related courses at Santa Monica College in Santa Monica, California. In view of the foregoing, it is concluded that the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the specialty occupation.

Pursuant to 8 C.F.R. § 248.3(g), there is no provision for an appeal from the denial of a change of status. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for a change of status, this issue will not be reviewed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved