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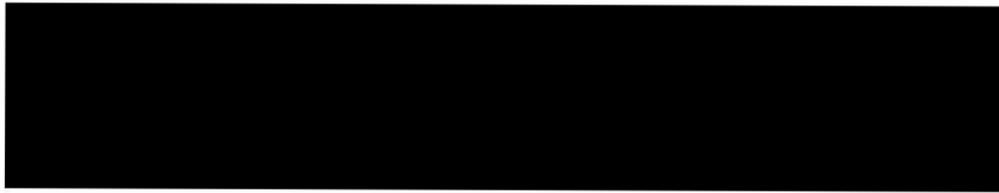


FILE: WAC 07 153 51125 Office: CALIFORNIA SERVICE CENTER Date: **APR 24 2008**

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 dismissed. The petition will be denied.

The petitioner is an automobile manufacturer that seeks to employ the beneficiary as a VSSM revenue management analyst. 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 2008 fiscal-year cap for the issuance of H-1B visas, set by section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A), was reached on April 1, 2007. Although the petitioner filed the Form I-129 petition on April 26, 2007, the petition was accepted and adjudicated because the petitioner indicated on the Form I-129 that the beneficiary met the cap exemption criterion at section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), as a beneficiary who, in the words of the Act, “has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).”

The director denied the petition on the ground that the beneficiary did not meet the requirements specified in section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), and thus the beneficiary was subject to the annual cap. Specifically, the director found that as of the petition's filing date of April 26, 2007, the beneficiary had not received his master's degree or completed all the requirements prior to filing.

On appeal, counsel contends that the beneficiary is exempt from the H-1B visa cap pursuant to 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), and resubmits a May 14, 2007 letter from the director of graduate student services of the Kelley School of Business at Indiana University, who states, in part:

This letter is to verify that as of April 23, 2007, [the beneficiary] had successfully completed all degree requirements for his MBA degree from the Indiana University Kelley School of Business MBA Program. He was officially awarded his Master of Business Administration degree by Indiana University on May 5, 2007.

The AAO bases its decision upon its consideration of all of the evidence in the record of proceeding, including: (1) the petitioner's Form I-129 (Petition for Nonimmigrant Worker) and the supporting documentation filed with it; (2) the director's denial letter; and (3) the Form I-290B, and supporting documentation.

Section 214(g)(5)(A) of the Act, 8 U.S.C. § 1184(g)(5)(A) as modified by the American Competitiveness in the Twenty-first Century Act (AC21), Pub. L. No. 106-313 (October 17, 2000), states, in relevant part, that the H-1B cap shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) of the Act who “has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C.

1001(a)) until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.”

As discussed above, on appeal counsel resubmitted a letter from the director of graduate student services of the Kelley School of Business at Indiana University, who states that as of April 23, 2007, the beneficiary had successfully completed all degree requirements for his MBA degree from the Indiana University Kelley School of Business MBA Program.

The record contains the following documentation pertaining to the beneficiary’s qualifications:

- A letter dated March 20, 2007, from the director of graduate student services at Indiana University, verifying that the beneficiary was scheduled to complete his degree requirements for his MBA degree on May 4, 2007;
- A letter dated April 23, 2007, from the director of graduate student services at Indiana University, verifying that the beneficiary successfully completed all the required coursework to earn his MBA degree on May 4, 2007;
- The beneficiary’s official transcript from Indiana University reflecting that the beneficiary was awarded a Master of Business Administration degree on May 5, 2007; and
- A letter dated May 14, 2007, from the director of graduate student services at Indiana University, verifying that the beneficiary successfully completed all degree requirements for his MBA degree as of April 23, 2007, and was officially awarded his MBA degree on May 5, 2007.

Although the director of graduate student services of the Kelley School of Business at Indiana University indicated in her April 23, 2007 letter that the beneficiary had successfully completed all his coursework for his MBA degree, and in her May 14, 2007 letter that the beneficiary completed all the requirements for his MBA degree as of April 23, 2007, this information is inconsistent with her March 20, 2007 letter, in which she stated that the beneficiary was scheduled to complete his degree requirements for his MBA degree on May 4, 2007. The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The exemption criterion at section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), requires that the beneficiary earn a “master’s or higher degree from a United States institution of higher learning.” The evidence presented by the petitioner does not establish that the beneficiary earned a master’s degree from Indiana University before the Form I-129 petition was filed. Citizenship and Immigration Services (CIS)

regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The AAO finds that the evidence of record does not establish that the beneficiary is exempt from the H-1B visa cap under the requirements of section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C) because the beneficiary had not earned a master's degree at the time that the petition was filed. Accordingly, the AAO will not disturb the director's denial of the petition

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 not met that burden.

**ORDER:** The appeal is dismissed. The petition is denied.