

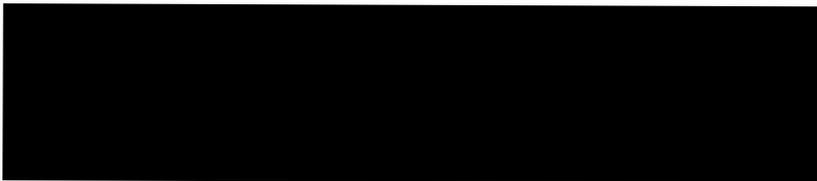


U.S. Citizenship
and Immigration
Services

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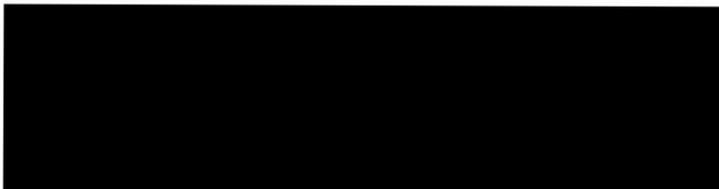
FILE: WAC 07 138 51088 Office: CALIFORNIA SERVICE CENTER Date: JUN 24 2008

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is engaged in information technology that seeks to employ the beneficiary as a programmer 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 record of proceeding before the AAO contains: (1) the 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) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner submitted the Form I-290B on September 13, 2007. The petitioner marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within 30 days. As such, the AAO faxed a follow-up letter to counsel's office on May 14, 2008, requesting that the brief and/or additional evidence be sent within five business days. Counsel did not respond to the AAO's facsimile. Thus, the AAO deems the record complete and ready for adjudication.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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:

- (I) 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 proposed position.

The petitioner states the ground of its appeal in the following paragraph at part 3 of the Form I-290B:

The petition was denied based on the allegation that we are not the actual employer of our employees and that we did not provide evidence of the end client where the programmer analyst duties would be performed by the beneficiary. We have enclosed evidence of the client location where the beneficiary will be working. He has in fact been working for our company at this client location pursuant to his Student Optional Practical Training and will continue to work at this site after the H-1B employment commences.

The AAO concurs with the petitioner’s position that the director erred in not recognizing that it will be the employer of the beneficiary. The director’s findings to the contrary of this determination are hereby withdrawn.

However, the appeal does not address the director’s findings to the effect that the petitioner: (1) failed to produce evidence that establishes specific details of the work that the beneficiary would perform for the petitioner’s client(s), and (2) therefore failed to establish that the beneficiary would be employed in a specialty occupation. The AAO finds that those findings accurately and fairly apply the relevant statutes and regulations to the facts as developed in the record of proceedings. As the petitioner fails to address these findings, and as they support the director’s conclusion that the petitioner failed to establish a specialty occupation, the director’s decision to deny the petition will be upheld.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal. As no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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 sustained that burden.

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