

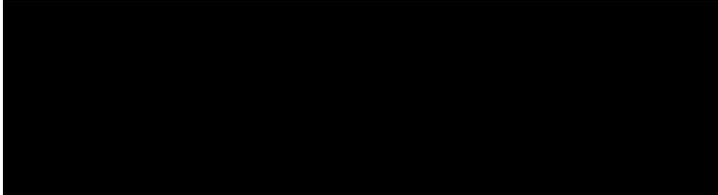
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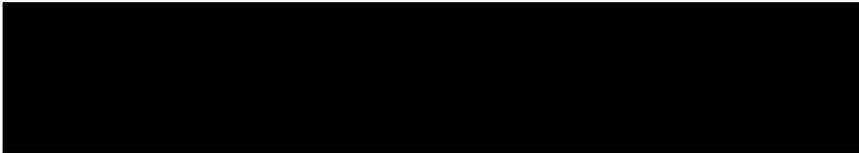
FILE: SRC 05 184 50868 Office: TEXAS SERVICE CENTER Date: MAR 03 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Texas Service Center on August 19, 2005. A Notice of Intent to Revoke (NOIR) was thereafter issued on March 27, 2006. The petitioner made timely response to the NOIR. The director then revoked approval of the Form I-129 petition by decision dated May 8, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner is an import/export company. It seeks to employ the beneficiary as a financial manager, and endeavors to classify him 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 revoked the Form I-129 petition following receipt of a memorandum dated November 28, 2005, from the American Consulate General's office in Bogotá, Colombia. That memorandum noted that the beneficiary did "not speak any English," which the vice-consul reasoned would normally be required to perform the duties of the proffered position: "preparation of financial reports; directing investment activities; and preparing reports required by regulatory authorities." The vice-consul also noted that the beneficiary reported that he had worked for [REDACTED] from 1999 – 2005, and had worked for no other company during that time period. In 2004, however, the beneficiary unsuccessfully applied for a tourist visa and indicated at that time, that he was employed by Comercialazadora Internacional Agrovida, Ltd., a company involved in the import and export of medical equipment. The purpose of the tourist visa request was to attend training sessions for FUKUDA Denshi equipment in Miami, FL, and an invitation letter to that effect was presented from the TOYO Medical Co.

In response to the director's NOIR, the petitioner stated that it was an importer and exporter of goods, trading principally with Spanish speaking partners and that the beneficiary's ability to speak Spanish was beneficial to the company. The petitioner also stated that the reports to be prepared by the beneficiary for regulatory authorities were primarily reports required by Spanish speaking countries and that the beneficiary had a great deal of experience in that regard. Further, the petitioner reported that the beneficiary was in fact employed by [REDACTED] when he applied for his tourist visa in 2004, and that he planned to leave that company and enter into a joint venture with Comercialazadora Internacional Agrovida, Ltd., but that company never actually began its business operations and the beneficiary remained in the employ of [REDACTED]. On appeal, the petitioner presented a letter from [REDACTED] stating that the beneficiary was employed by it from January 15, 1999 through 2001 as a junior accountant, and from 2002 through 2004 as a certified public accountant and financial advisor, having a flexible schedule which also allowed the beneficiary to serve as a consultant to other companies. The petitioner also presented a letter which is reported to be from the beneficiary's English tutor stating that the beneficiary received language tutoring five hours per week from June through August of 2005.

The director may only revoke the petition under one of five stated grounds listed in 8 C.F.R. § 214.2(h)(11)(B)(iii), after giving proper notice of intent to revoke (NOIR) the petition. In this instance the director gave notice of intent to revoke the Form I-129 petition. The petitioner responded to that notice as permitted by regulation, but that response is insufficient to overcome the basis of the director's NOIR. As such, the director's revocation shall not be disturbed.

The petitioner states that the beneficiary's proficiency in Spanish is required for the proffered position because the beneficiary will be required to file reports for regulatory authorities in Spanish speaking countries. The record contains no evidence of any such filing requirements with Spanish speaking countries, or that the petitioner does business with Spanish speaking countries. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Further, the beneficiary's lack of proficiency in the English language would preclude him from performing duties associated with a specialty occupation in the United States. The letter provided on appeal, which states that the beneficiary was tutored in English five hours per week for two months in 2005 is not sufficient to establish that the beneficiary has the language skills necessary to perform tasks associated with a specialty occupation.¹ The record contains no evidence establishing that the beneficiary would be performing tasks requiring only proficiency in the Spanish language while working on behalf of the petitioner. The record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation in the petitioner's business environment. Thus, the petition is properly revoked under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

Beyond the decision of the director, the record does not establish that the proffered position qualifies as a specialty occupation. The duties detailed for the position are presented in general terms and it is not possible to determine from that generic description precisely what tasks the beneficiary would perform on a daily basis, or the complexity of those duties.² While the job title listed on the Form I-129 is that of a financial manager, the nontechnical job description listed on the petition is that of internal accountant. Many accounting positions are held by accounting personnel with less than a baccalaureate level education. The record of proceeding does not establish that the duties to be performed by the beneficiary require the theoretical and practical application of a body of highly specialized knowledge that can only be obtained by individuals with a baccalaureate level education in a specific educational discipline. For this additional reason the petition may not be approved and the director's revocation shall not be disturbed.

As always, 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 failed to sustain that burden.

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

¹ The consular memorandum dated November 28, 2005, based upon an in-person interview with the beneficiary, states that the beneficiary "does not speak any English." The interview with the beneficiary was conducted on September 22, 2005, subsequent to the time that he states he received English tutoring (from June through August of 2005.)

² The Form I-129 indicates that the petitioner is an import and export company with six employees, and a reported gross annual income of \$350,000. No financial documentation was presented verifying the petitioner's reported annual income or the nature of its financial operations.