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U.S. Citizenship
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Services

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FILE: WAC 04 054 50130 Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2006

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:
[Redacted]

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, Director
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 a corporation engaged in medical services. In order to employ the beneficiary as a medical researcher, 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).

In his decision denying the petition, the director stated that, by failing to provide certain information requested in the director's request for additional evidence (RFE), the petitioner precluded the director "from making an affirmative determination as to the nature, complexity, and viability of the petitioner's business." The director also stated that, with regard to the number of its employees, there was an unexplained discrepancy between the Form I-129 (35 employees) and the organizational chart (9 employees).

The evidence requested in the RFE but not provided consists of the following items: a copy of the petitioner's license to operate its medical services business, and "copies of the petitioner's Federal Form 941, Quarterly Wage Reports[,] for all employees for the last 4 quarters."

On appeal, petitioner submits a Form I-290B (Notice of Appeal) and several other items for consideration, which are identified as exhibits to the Form I-290B. There is an appellate brief, styled as a "Motion to Appeal"; printouts from the petitioner's Internet site on July 16, 2004; and a copy of a brochure about the petitioner. A document entitled "Employees Census, November 19, 2003" lists 28 employees by name, immigration status, and job title. Another exhibit is a copy of a City of Santa Fe Springs Business License that bears no business name and is blank in the spaces for mailing address, expiration date, license number, business telephone, and Federal identification number. The exhibits also include a copy of printouts from the petitioner's Internet site on July 23, 2004.

As discussed below, the AAO finds that the evidence of record does not establish that the petitioner is proffering a specialty occupation position. Therefore, the appeal will be dismissed, and the petition will be denied. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, the petitioner's brief, and the documents filed with the brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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:

- (1) 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) has consistently interpreted 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 proffered position. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The appeal will be adjudicated on the record of proceeding that was before the director and the organizational chart that is submitted on appeal as a supplement to the organizational chart that was submitted in response to the RFE.

The AAO disregards the other documents submitted on appeal, as they were not provided in response to the RFE that requested such evidence. These include the printouts from the petitioner's Internet site; the petitioner's brochure; and the copy of the business license.¹ 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). The purpose of a RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Counsel's statement prior to appeal that the requested information was not available because of a bankruptcy proceeding being handled by a different counsel does not excuse the petitioner's failure here to comply with requirement at 8 C.F.R. § 103.2(b)(8) to submit RFE-requested information within 12 weeks of the request. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence in the aforementioned documents submitted on appeal.

The AAO finds that the director's decision to deny the petition was correct. As indicated in the director's decision, the petitioner failed to provide evidence that was the subject of a reasonable RFE request aimed at corroborating assertions in the petition that were material to the correct adjudication of the petition. By failing to provide a copy of its license to operate its medical services business and the tax information requested in the RFE, the petitioner prevented the director from accurately assessing whether the beneficiary would be employed by a petitioner in an occupation requiring the services of a medical researcher with at least a bachelor's degree, or the equivalent, in a specific specialty. As the petitioner deprived the director of material evidence required for an accurate determination of whether the proffered position is a specialty occupation, the director lacked an adequate factual basis for approving the petition. Accordingly, the appeal will be dismissed and the petition will be denied. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The AAO also finds that the organizational chart submitted on appeal does not resolve the discrepancy noted by the director between the initially submitted organizational chart and the number of employees stated on the Form I-129. Thus, the appeal has not overcome the legitimate doubt about the accuracy of the information in the petition that is caused by the inconsistency of information contained therein. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such

¹ The copy of the business license submitted on appeal would have had no evidentiary value even if it were considered by the AAO, as all its areas for information related to the licensee are blank.

inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As the petitioner provided insufficient evidence to establish that the proffered position is a specialty occupation, the appeal will be dismissed and the petition will be denied.

As always, the burden of proving eligibility for the benefit sought remains entirely 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.