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U.S. Citizenship and Immigration Services

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JAN 27 2004

FILE: WAC 01 067 51743 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a home nursing care services company that seeks to employ the beneficiary as a marketing 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 director denied the petition based on the beneficiary's qualifications to be a management analyst. On reviewing the record, the director misclassified the position and the petition will be remanded for review, using the correct classification for the position.

Beyond the decision of the director, the AAO notes that the evaluator used for the credentials evaluation is only qualified to make an assessment of the beneficiary's academic credentials. He does not meet the regulatory requirements to assess the beneficiary's work experience.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation and whether the beneficiary is qualified for this occupation, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. 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.

ORDER: The director's August 16, 2001 decision is withdrawn. The matter is remanded to the director for further action and consideration consistent with the above discussion and entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.