U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: WAC 03 195 53763 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 2005

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 appeal will be dismissed. The petition will be denied.

The petitioner is an information technology firm that seeks to employ the beneficiary as a systems analyst. 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).

The director denied the petition on the basis that the petitioner did not submit an approved labor condition application (LCA) for the locations where the beneficiary would be working. The petitioner had submitted an approved LCA for San Jose, California. The petitioner's office is in San Diego, California. The section to indicate where a beneficiary would be working if different from the petitioner's address (Part 5 of the Form I-129, Petition for a Nonimmigrant Worker) was left blank, indicating that the beneficiary would be working in San Diego. As noted, however, the LCA was for San Jose, a distance of approximately 460 miles from San Diego. On appeal, counsel states that the prevailing wage was the same for the two locations, which are in the same geographic region, and therefore, that item D, subsection A of the LCA was irrelevant. Counsel submits a revised certified LCA that includes both San Diego and San Jose, as well as a revised Form I-129, stating that the beneficiary would be working in San Jose.

In response to the director's request for evidence, the petitioner stated that the beneficiary would be working in both San Diego and San Jose. The regulations state, "[B]efore filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed." 8 C.F.R. § 214.2(h)(i)(4)(B)(*1*). Since the beneficiary would be working at two different sites, approximately 460 miles apart, the petitioner was required to include both sites on the original LCA in order for it to be valid.

The petitioner obtained certification for the proffered position, which included both worksites, more than two months after the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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 director was correct to deny the petition based on the invalidity of the LCA.

Beyond the decision of the director, the petitioner did not establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The petitioner submitted a credentials evaluation with the initial petition. The AAO notes that page one of the evaluator's assessment is not included in the record. The evaluator concluded that the beneficiary possessed the equivalent of a bachelor's degree in computer information systems from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's education and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). While the evaluator stated that he has "authority to grant college-level credit for training and/or experience in the field of management/computer

information systems whenever the counseling department can not resolve a transfer case (in the field of management/computer information systems) and needs an in depth evaluation," there is no evidence in the record to support this claim, nor is there any evidence that Florida International University, where he teaches, has an established program to grant credit for training or experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)*(1)*. Going on 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 Dec. 190 (Reg. Comm. 1972)).

The evaluator also stated that he meets the definition of a recognized authority as demonstrated by his resume and as defined by the regulations. The record does not include a copy of the evaluator's resume.

The AAO also notes that the evaluator stated that his evaluation is based upon a review of the beneficiary's "educational and work history, curriculum vitae and letters issued by his employers detailing his job responsibilities." There are no letters from the beneficiary's employers in the record.

For these additional reasons, the petition may not be approved.

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.