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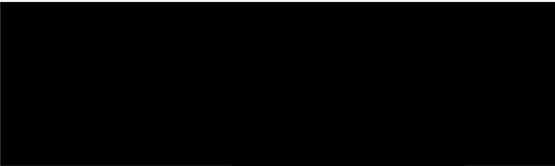
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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FILE:

WAC 04 132 51445

Office: CALIFORNIA SERVICE CENTER

Date: SEP 09 2008

IN RE:

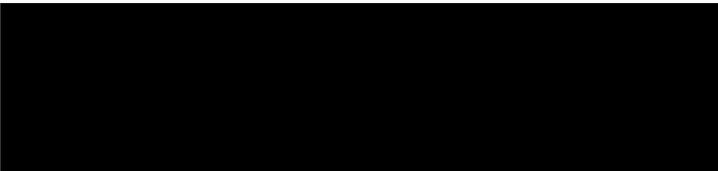
Petitioner:

Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The visa petition will be approved.

The petitioner is a medical office. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established that the beneficiary will be employed in a permanent, full-time position and that the petitioner failed to establish its intent to engage the beneficiary in accordance with the terms of the job offer. The director noted that "the record indicates that the beneficiary has not been working full-time as an accountant because a permanent, full-time position does not exist for an accountant with this petitioner." The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's March 10, 2006 denial, the issues in this case are whether or not the petitioner established that the beneficiary will be employed in a permanent, full-time position and whether or not the petitioner has established its intent to engage the beneficiary in accordance with the terms of the job offer.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal<sup>1</sup>. Relevant evidence submitted on appeal includes counsel's brief, a copy of an O\*Net Online print-out containing a summary report for accountants from the website at <http://online.onetcenter.org/link/summary/13-2011.01> (accessed on April 28, 2006), a list of the duties and responsibilities for the beneficiary as an accountant of the petitioner, a copy of a pay stub issued by the petitioner on behalf of the beneficiary with a check date of April 30, 2006, and a copy of Form I-864, Affidavit of Support Under Section 213A of the Act.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The petitioner filed a Form ETA 750 on December 20, 2001. The petitioner listed the job requirements as requiring a B.S. Degree (4 years) with a major field of study in accounting. No experience was listed as required. The petitioner also described the job to be performed as:

In-house accounting for large volume of accounts. Responsible for preparing the quarterly and yearly tax returns, payroll statements and deductions, monthly profit and loss reports and financial statements. Direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers. Prepare balance sheets reflecting company's assets, liabilities, and capital. Perform audits and prepare reports. Responsible for updating and maintaining the account receivables that are outstanding. Assist management in formulating and updating of budget and management operation reports. The above duties are performed using Topaz 1.

On the ETA 750A, the petitioner listed the address where the beneficiary would be employed as [REDACTED] Lynwood, CA 90262. On the Form ETA 750B, Statement of Qualifications of Alien, the beneficiary indicated that she had been working for the petitioner since February 2001, listing the petitioner's address as [REDACTED] Long Beach, CA 90815.

DOL certified the Form ETA 750 on February 19, 2004. On April 16, 2004, the petitioner filed the instant Form I-140, Immigrant Petition for Alien Worker, with CIS. In support of the petition, the petitioner has submitted copies of its 2001 through 2004 federal tax returns, copies of the 2002 and 2003 Forms W-2, Wage and Tax Statements, issued by the petitioner on behalf of the beneficiary, copies of the petitioner's 2004 and first and second quarter 2005 Forms DE-6, California Quarterly Wage and Withholding Reports, copies of pay stubs issued by the petitioner on behalf of the beneficiary for the periods February 15, 2004, February 29, 2004, and March 15, 2004, a copy of the beneficiary's Bachelor of Science Degree in Commerce with transcripts, and a letter, dated March 17, 2004, from the petitioner's owner confirming the offer of employment to the beneficiary.

On October 3, 2005, an interview with the beneficiary and the petitioner's administrator was conducted. The interviewer determined that the petitioner consisted of three full-time employees, the beneficiary, the administrator, and the petitioner's owner. The interview revealed that the petitioner's need for an accountant commenced in 2000 and that the need will continue into the future. The interviewer determined that although the beneficiary was currently working in the accountant position, she was only being paid approximately \$10 an hour as she is not a certified accountant, that the beneficiary was only posting insurance payments onto an Excel ledger, and that the posting of insurance payments onto an Excel ledger was not consistent with the duties described in Part A, Section 13 of the labor certification. As a result of the interview, the director denied the visa petition concluding that the beneficiary would not be employed in a permanent, full-time position as an accountant and that the petitioner failed to establish its intent to engage the beneficiary in accordance with the terms of the job offer.

For the reasons discussed below, the director's conclusions, drawn solely from the interview conducted on October 3, 2005, and without further investigation, are too speculative to form the basis of a finding that the beneficiary would not be employed in a permanent, full-time position as an accountant and that the petitioner failed to establish its intent to engage the beneficiary in accordance with the terms of the job offer. Moreover, the director did not take into consideration the interviewer's notation: "Since 2001 [the beneficiary] has been doing accounting."

First, the AAO would like to note that the interview notes in the record of proceeding are unclear and barely legible. In addition, a review of CIS records reveals that the petitioner has sought to employ an accountant by filing Forms I-129 for the beneficiary and another individual. The Form I-129 filed on behalf of the beneficiary (WAC 00 143 51782) was approved on August 14, 2000, was valid from October 1, 2000 to October 12, 2003, and specifically listed the beneficiary's field of study as accounting with a compensation of \$34,154.00. The Form I-129 filed on behalf of the other individual (WAC 02 218 53635) was approved on July 2, 2002,<sup>2</sup> was valid from July 1, 2002 through July 1, 2005, and specifically listed the beneficiary's field of study as accounting with a compensation of \$60,000.00. It is unclear as to why there is such a discrepancy in the wages paid to the beneficiary and the other individual, but the fact that the petitioner filed the Forms I-129 with Labor Certification Applications that were certified by DOL would indicate that the petitioner has had a need for an accountant in the past, and the AAO has no reason to doubt that the petitioner's need for an accountant would not continue into the future. The director's finding that the petitioner will not provide full-time employment is not supported by the facts and is based solely on the director's expectation that the petitioner will not do so. Since the director did not challenge the beneficiary's qualifications or the petitioner's ability to pay the proffered wage, there is no basis for his determination that the petitioner would or could not provide the beneficiary with full-time and permanent employment.<sup>3</sup>

For the reasons discussed above, the evidence submitted on appeal overcomes the decision of the director.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The director's decision of March 10, 2006 is withdrawn. The petition is approved.

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<sup>2</sup> It is noted that the approval of the Form I-129 was subsequently revoked on March 25, 2004 after CIS received a notice of withdrawal from the petitioner.

<sup>3</sup> It is noted that the petitioner signed both the Form I-140 and Form ETA 750 under penalty of perjury. Therefore, the petitioner should be aware that its failure to comply with the terms of the Form I-140 and Form ETA 750 would cause the petitioner to be prosecuted for perjury pursuant to 28 U.S.C. § 1746 in accordance with 20 C.F.R. § 656.20(c)(9). 18 U.S.C. § 1621 states in pertinent part:

*Perjury generally.* (2) Whoever in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.