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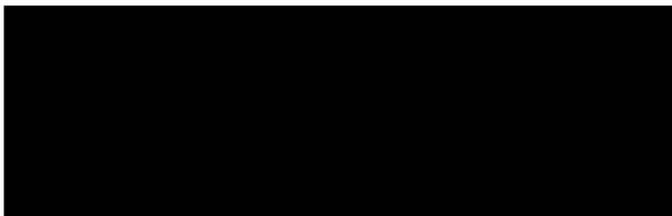


FILE: WAC 07 148 50284 Office: CALIFORNIA SERVICE CENTER Date: DEC 08 2008

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
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 mortgage banking business that seeks to employ the beneficiary as a computer programmer. 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, determining that the petitioner had not submitted all of the requested documentation. Specifically the petitioner had not submitted the petitioner's federal income tax returns for 2005 and 2006, or details pertaining to all of the businesses using the same address as the petitioner, including an explanation as to why the petitioner and XL Dynamics, Inc. (XL Dynamics) filed petitions using the same Employer Identification Number (EIN).

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 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.

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) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In a March 27, 2007 letter submitted in support of the petition, the petitioner described the proposed duties of the proffered computer programmer position as follows:

- Customize web pages as per customer specifications, test and write technical documentation of the code;
- Research and analyze mortgage lending and loan processing procedures, requirements and methods of loan initiating, processing, finalizing and closing, to develop programs to facilitate the processes;
- Write out programming procedures, define data processing parameters, and set computer processing commands and codes;
- Develop search engine functions for both primary loan market and secondary mortgage market and loan providers with instant rate report and analyzing functions;
- Install, maintain software applications for corporate clients, program, and configure web-based loan analysis and data management solution software, and test and debug technical issues and problems; and,
- Provide technical training to end users on the application or systems.

In an RFE, the director requested additional information from the petitioner, including: a list of all of the petitioner's other businesses using the same address listed on the petition for the petitioner, along with the business name, telephone number, and names of the president, vice-president, and general manager, past and present registering agents, and all employees; a detailed explanation of the petitioner's or the petitioner's company's relationship to any other companies and any officers or employees holding positions in more than one company; and, if applicable, a detailed explanation as to why the petitioner is sharing office space with another company rather than having a separate office. The director also requested the petitioner's federal income tax returns for 2003 through 2006.

In response to the RFE, counsel stated, in part, that the petitioner is fully owned by [REDACTED] who is the petitioner's founder and current president, and that [REDACTED] also owns the building in which the petitioner is located, at the address reflected on the petition: [REDACTED], Cerritos, California 90703. Counsel also stated that the same building has two floors, one of which is rented out to and occupied by XL Dynamics, and that XL Dynamics has been in business since 1998, is independent of the petitioner, and is wholly owned by [REDACTED] who is its founder and current president. Counsel also stated:

[REDACTED] and [REDACTED] are father and son, respectively. [REDACTED] currently advises XL Dynamics, Inc. and is a member of the board of directors for the company. [REDACTED] also serves as Executive Vice President of [the petitioner]. Although this is a father-son relationship, both companies have separate and distinct identities, maintaining their own employees and payroll. Attached . . . please find a list of the contact information for XL Dynamics, Inc., as well as a list of all current employees. The Service will note that the only individuals serving in any capacity at both companies are [REDACTED] and [REDACTED]

As supporting documentation, the petitioner submitted the following: copies of the petitioner's federal income tax returns for 2002 and 2003; the petitioner's financial statements and supplementary information for 2004 through April 30, 2006; the petitioner's quarterly wage and withholding reports for the second, third, and fourth quarters of 2006 and the first quarter of 2007; the petitioner's business licenses and certificate of status; the petitioner's "Real Estate Officer License" listing [REDACTED] as officer; copies of two checks, dated October 11, 2006 and November 7, 2006, both in the amount of \$4,000.00, issued to the petitioner from XL Dynamics and invoiced as office lease/rent, listing the same address for both businesses; a copy of a check, dated April 24, 2007, for the amount of \$20,000.00, issued to the petitioner from XL Dynamics, listing the same address for both businesses; a list of contact information for XL Dynamics, reflecting the name of the president as [REDACTED], the present vice president, [REDACTED], and no general manager or past and present registering agents; a list of employees for XL Dynamics; an "explanation of [the petitioner]"; and a "DE-6 Release Authorization."

The director denied the petition on the basis of her determination that the petitioner had not submitted all of the requested documentation. Specifically the petitioner had not submitted the petitioner's federal income tax returns for 2005 and 2006, or details pertaining to all of the businesses using the same address as the petitioner, including an explanation as why the petitioner and XL Dynamics both filed petitions using the same EIN. Therefore, the petitioner failed to provide evidence to establish eligibility, pursuant to 8 C.F.R. §§ 103.2(b)(11) and (14).

On appeal, the petitioner states, in part, that the director incorrectly found that the petitioner and XL Dynamics share the same EIN, and that the petitioner's income tax returns were submitted for only 2002 and 2003, as the petitioner's 2003 income tax return is for the period from October 1, 2003 through September 30, 2004. The petitioner also states that the third business located at the address reflected on the petition, Cal State Funders, Inc., never engaged in any business, never acquired any assets, never incurred any debts, and was dissolved as of September 27, 2007. As supporting documentation, the petitioner submits: copies of previously submitted documentation, including the petitioner's federal income tax returns for 2002 and 2003, and an August 1, 2007 letter from [REDACTED] of the Partnership of Accountants and Tax Consultants; a "corrected" report in reference to an IRS audit pertaining to the petitioner's fiscal years that ended on

September 30, 2003 and September 30, 2004; documentation related to Cal State Funders, Inc.; and EIN documentation from the IRS pertaining to the petitioner's businesses.

As discussed above, the director denied the petition, determining that the petitioner had not submitted the petitioner's federal income tax returns for 2005 and 2006, or details pertaining to all of the businesses using the same address as the petitioner, including an explanation as to why the petitioner and XL Dynamics both filed petitions using the same EIN. The AAO acknowledges the petitioner's statements and additional information submitted on appeal, including the documentation pertaining to the petitioner's dissolved business, Cal State Funders, Inc., and the EIN information for the petitioner, XL Dynamics, and Cal State Funders, Inc. The petitioner, however, still has not submitted all of the information requested by the director, including its 2005 and 2006 federal income tax returns. Although the petitioner submits the previously submitted August 1, 2007 letter from the petitioner's accountant stating that the "[t]echnical issues resulting in the 2003 and 2004 audit will affect the subsequent years and is the reason for the postponement of the 2005 and 2006 income tax returns," the record still does not contain the petitioner's 2005 and 2006 income tax returns or any documentation from the IRS granting the petitioner an extension to file the same returns. In addition, although on appeal the petitioner submits EIN information pertaining to the petitioner and XL Dynamics, reflecting different EINs for both, the petitioner still has not submitted an explanation as to why the petitioner and XL Dynamics both filed petitions using the same EIN. 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). In view of the foregoing, the petitioner has not overcome the director's objection. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has also failed to establish that the proffered position is a specialty occupation. The record contains insufficient evidence on this issue. 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)). Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 not been met.

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