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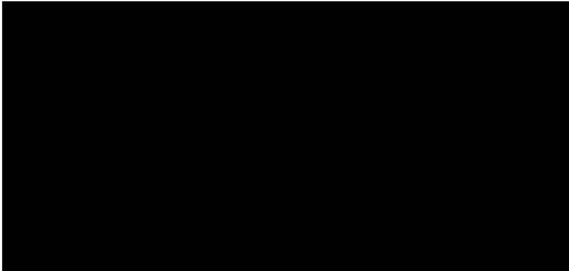
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 188 50387 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2008**

IN RE: Petitioner:
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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be summarily dismissed.

The petitioner is an international cargo forwarder. It claims to employ four personnel and although established in 2005 does not provide evidence of gross or net annual income. It seeks to employ the beneficiary as an internal auditing specialist. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On June 7, 2007, the director denied the petition. The director determined that the business in which the beneficiary would be employed does not require the services of a corporate accountant who is part of an executive decision-making team. Upon review of the duties of the position, the director determined that the proffered position did not include complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position required an individual with a knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant or auditor.

The record of proceeding before the AAO contains: (1) the Form I-129 filed May 22, 2006 with supporting documentation; (2) the director's October 27, 2006 request for further evidence (RFE); (3) the petitioner's January 3, 2007 response to the director's RFE and supporting documentation; (4) the director's June 7, 2007 denial letter; and (5) the Form I-290B, Notice of Appeal, date stamped as received by the California Service Center on July 6, 2007. Although the Form I-290B indicates that a brief and/or additional evidence would be submitted to the AAO within 30 days, careful review of the record reveals no subsequent submission of a brief or evidence.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The petitioner's statement on the Form I-290B reads:

USCIS based their decision on the size of the petitioner's business enterprises. It is the contention of the petitioner that size and past hiring practices alone should not be the basis for any adverse decision.

The USCIS does not have the expertise to deny the petition based on the petitioner's business plan for expansion.

Of note, the director did not base his decision on the size of the petitioner; rather the director found that the duties of the position and the nature of the petitioner's business did not establish that the proffered position would be a specialty occupation. In addition, the AAO observes it is reasonable to assume that the size of an employer's business has an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006).

Of further note, when determining whether the accounting knowledge required by a proffered position rises above that which may be acquired through experience or an associate's degree in accounting, CIS must review the information in the record regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant or auditor. In matters where a petitioner's business is relatively small, like that in the instant matter, the record must contain evidence that its operations are, nevertheless, of sufficient scope and/or complexity to indicate that it would employ the beneficiary in an accounting or auditing position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. In this matter, the petitioner has not submitted further evidence or argument to substantiate that the nature of its business operations requires that the individual in the proffered position have a four-year degree in accounting or a related discipline.

The petitioner has not submitted any documentary evidence or argument sufficient to overcome the director's decision in this matter. The petitioner does not address the director's findings or determinations regarding the record of evidence as submitted in support of this petition. The petitioner fails to specify and support how the director's decision included an erroneous conclusion of law or statement fact when denying the petition. As the petitioner does not present additional evidence or argument on appeal sufficient to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v). The appeal will be summarily dismissed. The petition will be denied.

The burden of proof in this proceeding 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 summarily dismissed. The petition is denied.