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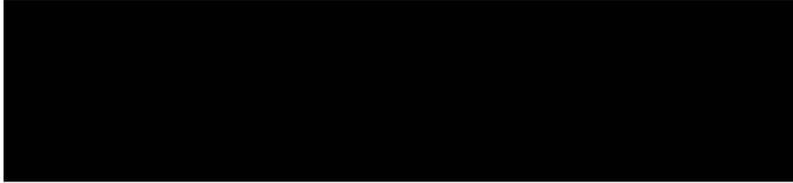
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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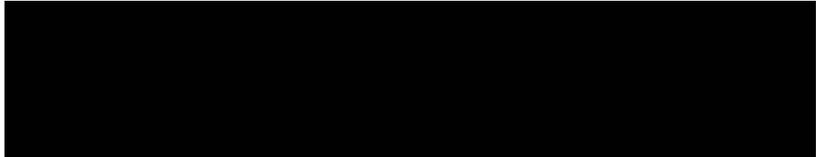


FILE: LIN 05 216 50292 Office: NEBRASKA SERVICE CENTER Date: MAR 14 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant petition. The Administrative Appeals Office (AAO) withdrew the director's denial decision and remanded the petition to the director for entry of a new decision. The matter is now before the AAO on certification. The AAO will concur in the denial of the decision. The petition will be denied.

The petitioner is a software development and consulting firm that seeks to employ the beneficiary as a programmer analyst. Accordingly, 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 initially denied the petition, determining that the petitioner had failed to demonstrate the existence of an employer-employee relationship between the petitioner and the beneficiary. The AAO withdrew the director's decision, but determined that the petition could not be approved as the petitioner had failed to establish that the beneficiary would be employed in a specialty occupation. The AAO found that although the petitioner would act as the beneficiary's employer, the evidence of record established that the petitioner is an employment contractor¹ in that the petitioner would place the beneficiary at work locations to perform services established by contractual agreements for third party organizations. The AAO further determined that pursuant to 8 C.F.R. § 214.2(h)(2)(i)(B), employers must submit an itinerary with the dates and locations of employment if the beneficiary's duties will be performed in more than one location. The Form ETA 9035E, Labor Condition Application (LCA) lists the beneficiary's work location in Streamwood, Illinois.

In its April 5, 2007 decision, the AAO acknowledged that the petitioner had submitted a work order dated July 8, 2005, from [REDACTED], an entity that indicated it would contract the beneficiary's services to one of its clients. The work order indicated that the beneficiary would work on a project in Streamwood, Illinois beginning July 18, 2005 for a six-month period. The AAO also acknowledged an itinerary submitted on appeal stating that the beneficiary would work on a project for [REDACTED]'s client between July 2005 and February 2006 with the possibility of extension and then would work on a project for the petitioner in March 2006. The AAO found that the itinerary did not identify the beneficiary's duties or describe the duties associated with any of the proposed projects that the beneficiary would work on. The AAO noted that the record did not contain contracts, work orders, or statements of work from [REDACTED]'s client, the entity for whom the beneficiary would provide his services. The AAO also noted other contracts in the record that did not identify the beneficiary as a consultant and the petitioner's statement that the other contracts would potentially require the beneficiary's services.

The AAO determined that the evidence in the record did not satisfy 8 C.F.R. § 214.2(h)(2)(i)(B), as the evidence did not cover the entire period of the beneficiary's employment by the petitioner. For this reason, as well as the lack of a description of the beneficiary's duties for the ultimate user of his services, the AAO remanded the matter for review and entry of a new decision by the director.

¹ See also Memorandum from Michael L. Aytes, Assistant Commissioner, INS Office of Adjudications, *Interpretation of the Term "Itinerary" Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant Classification*, HQ 70/6.2.8 (December 29, 1995).

In response to the director's request for further evidence prior to entering a new decision, the petitioner provided a May 1, 2006 contract with [REDACTED] an entity that also provided contractors to its clients. [REDACTED] indicated it was located in Edison, New Jersey. The work order appended to the contract indicated that the beneficiary would work in Schaumburg, Illinois beginning August 1, 2007 for a one-year period and possible extensions. The petitioner also provided a July 3, 2007 letter from the president of [REDACTED] describing the duties the beneficiary would perform at its facility located in Schaumburg, Illinois. The letter is written on [REDACTED] letterhead showing two office locations, one in Edison, New Jersey, and one in Schaumburg, Illinois.

The director determined that the petitioner had not provided evidence that identified an actual project for an identifiable end user entity including its location and the duties to be performed. The director concluded that CIS could not determine from the evidence in the record that the petitioner had sufficient H-1B level employment immediately available for the beneficiary at a location that complied with the LCA. Neither counsel nor the petitioner submitted further evidence on certification.

The record contains evidence that the beneficiary: would work on an undefined project from July 18, 2005 for a six-month period; would work on an undefined project for [REDACTED]'s client between July 2005 and February 2006 with the possibility of extension and then on undefined projects for the petitioner beginning in March 2006; and then at a third party's facility performing the duties of a programmer analyst, beginning in August 2007 for one year and possible extensions. Thus, the record does not contain evidence that the beneficiary's work for all of the time of requested H-1B employment incorporated the duties of a specialty occupation. The AAO is unable to discern the nature of the proposed duties for the period beginning in July 2005 to August 2007 and whether those duties included duties that incorporate the theoretical and practical application of a body of highly specialized knowledge that require the attainment of a bachelor's degree or higher degree in the specific specialty or its equivalent as a minimum for entry into the occupation in the United States. The AAO observes that the Department of Labor's *Occupational Outlook Handbook* indicates there are a number of computer-related positions, some of which require a four-year course of college-level education, some of which require a two-year associate's degree, and some of which only require experience. Without a detailed job description from the entity that requires the alien's services, the AAO is unable to conclude that the third party's projects or the petitioner's projects are projects that incorporate the duties of a specialty occupation. 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 petitioner has not established the proffered position is a specialty occupation.

The AAO concurs with the director's recommendation to deny the petition based upon the reasoning discussed above. The petition will be denied. As always, 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 met that burden.**

ORDER: The AAO concurs with the director's recommendation to deny the petition based upon the reasoning discussed above. The petition is denied.