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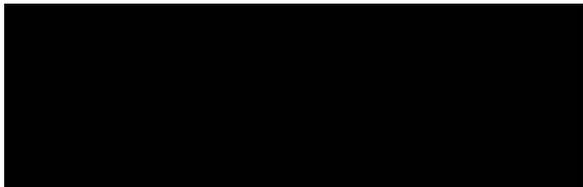
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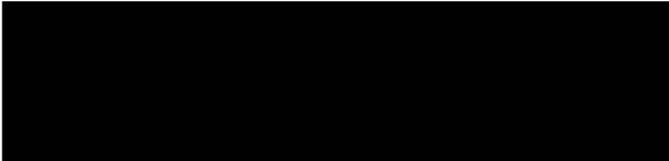
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FILE: WAC 07 079 51899 Office: CALIFORNIA SERVICE CENTER Date: **MAY 02 2008**

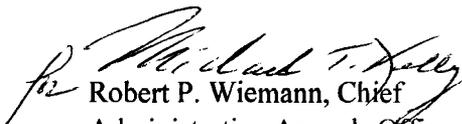
IN RE: Petitioner:   
Beneficiary: 

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:  


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 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 states that it is "a California Corporation" that seeks to employ the beneficiary as a Chemist-Informatic Support. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the petitioner has not established that the offer of employment to the beneficiary is bona fide and that it would employ the beneficiary in a specialty occupation.

Section 214(i)(1) of 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)(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.

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

The petitioner is seeking the beneficiary's services as a Chemist- Informatic Support. In response to the director's request for evidence, the petitioner provided the following job description for the proffered position:

The company needs member of technical staff who can further the research and development of our product. [The beneficiary's] job duties will include

- The candidate is required to do studies on the inks and coatings and the information of the ideal amounts of inks required to be applied on the coated media from each set of inkjet printers such as Canon, Epson, and HP. This information support of Inks and Polymer coatings on the coated media is essential to study the interaction of inks and coatings and optimize the ink load levels for producing good metallic looking images on various printers.
- Organic and polymer inkjet coatings, data analysis and information management for product development.
- The candidate is also required to tailor the formulations for the organic coatings to produce the improved coated media to have positive interaction with the different inkjet printers to produce images across the board printers.
- Develop polymer chemical coatings for acid-base transparentizing coatings.
- Synthesis of organic polymers for use in inkjet coatings related to different media.
- Identifying new commercial polymer chemicals for coatings related to inkjet printing.
- Testing of coated formulations on inkjet printers.
- Developing standard operational procedures and testing protocols as they relate to inkjet printing formulations.
- Develop novel coatings for water resistant inkjet imaging media.
- Recording all the experiments conducted.
- Inventing new polymer systems for inkjet coatings applications.
- Interacting with clients on regular basis for ongoing product development work.

The director noted that she was unable to verify and substantiate the products or the services that the petitioner is claiming to be providing. The director also noted that the petitioner had not presented specific, credible evidence showing that its organization has unique and specific needs for such services for the period of time in which it intends to employ the individual.

On appeal, counsel for the petitioner explains that the petitioner wishes to employ the beneficiary to perform duties "in the development of cutting edge printing technology which uses inkjet printers to produce images of the same quality as training photographic methods." Counsel further explains that the beneficiary has developed a technology that is patented and licensed to the petitioner. The appeal further states that the petitioner has "signed a contract with Glatfelter, Inc. to bring this technology to market." The petitioner submitted a letter from the Glatfelter Global Director – New Product Development, stating that the beneficiary "is one of our partners for an emerging new technology that we are exploring in our Ohio research laboratories." The letter also states that Glatfelter has "licensed a patent developed and held by [the beneficiary] to explore its potential usage in multi-million dollar specific market segment. We are the sole North America licensee of this new technology."

The record contains a 2005 federal tax return, Form 1120, for the petitioner with an employer identification number. The petitioner is an incorporated business and, therefore, a separate legal entity.

The AAO notes that there are similarities between the duties of the proffered position and that of the work performed by chemists; however, the record failed to establish that the petitioner's operations were of the scope or complexity to require the services of a chemist, or that its business was of the type in which chemists would be employed on a full- or part-time basis for any length of time. While the proffered position, as described, reflects the duties of chemists, the evidence of record fails to establish that the petitioner will employ the beneficiary to perform those duties.

As previously noted, one of the factors considered by CIS in determining whether a particular job qualifies as a specialty occupation is the nature of the petitioning entity's business operations, i.e., whether the record establishes that the beneficiary's employment is consistent with those operations. In the instant case, the petitioner has stated that it signed a contract with Glatfelter, Inc. to bring a licensed patented technology to the market. However, the petitioner has submitted no evidence to establish its business operations, including the ability to bring the patent to the market, or a business license to work with the chemical processes described in the petition, a copy of the patent obtained by the beneficiary, or a copy of the contract between the petitioner and Glatfelter, Inc. The record contains no documentation, financial or contractual, that identifies the companies to or for which the petitioner provides services, the specific services provided or the manner in which those services are provided. Nor has the petitioner submitted promotional or informational materials that describe its business or services. As a result, the record, despite the statements made by the petitioner and counsel, does not establish the petitioner as a company that is involved in researching and developing unique chemical processes. Simply going on record without supporting documentary evidence is not sufficient for the 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)).

In the absence of any evidence to prove that it is engaged in the business activities that it asserts require the beneficiary's services, the petitioner cannot establish that it will actually employ the beneficiary as a chemist. Although its description of the proffered position generally reflects the duties of a chemist, this description, alone, cannot establish the proffered position as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Without persuasive evidence of the petitioner's business operations and their requirement for a chemist as asserted in the petition, the duties listed in the record do not constitute a reliable basis for the AAO to find a specialty occupation.

The petitioner indicated on the LCA that the beneficiary would be paid a salary of \$45,000 per year, which meets the prevailing wage for this occupation. The AAO also notes that the petitioner has a CEO. Thus, the petitioner will at least employ the CEO and the beneficiary. However, in reviewing the petitioner's 2005 federal tax returns, the company had gross sales of \$50,000. In addition, the AAO notes the discrepancy in the gross annual income stated on the Form I-129 as \$ 350,000 and the gross sales stated in the petitioner's 2005 federal tax return as \$50,000. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of

the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. Counsel has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner. The petitioner did not submit any job postings. On appeal, the petitioner submitted seven letters of reference in support of an immigrant visa on behalf of the beneficiary. However, these letters do not address the director's concerns that the petitioner did not establish that the petitioner is offering a viable job offer. Again, 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. at 165. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the particular position that is subject of this petition is so complex or unique that it can only be performed by an individual with a degree. As noted above, without comprehensive and detailed information about the petitioner's business operations, the AAO cannot reasonably determine the proposed position's level of complexity or uniqueness.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner has submitted no evidence regarding its past recruiting and hiring practices with regard to other similarly situated employees. Again, 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. at 165. Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As the petitioner did not submit documentation to establish its business operations, the AAO cannot determine the level of specialization and complexity at which the beneficiary's duties would actually be performed.

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will not disturb the director's denial of the petition.

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.