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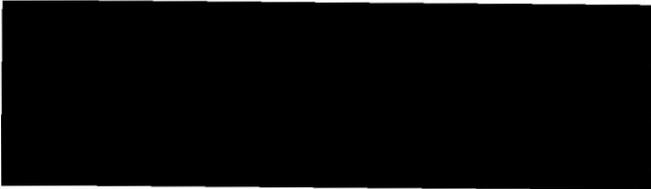
FILE: WAC 07 147 50380 Office: CALIFORNIA SERVICE CENTER Date: NOV 05 2008

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 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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision

The petitioner is a software consulting and placement firm. It seeks to employ the beneficiary as a "Business Analyst ERP" 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 stating that the record did not establish that the petitioner was a viable company that was financially able to expand its workforce. Specifically, the director noted that the petitioner projected an annual gross income of \$1,000,000, yet provided a 2006 tax return showing a gross income of only \$173,351. The director further noted that the petitioner's quarterly federal tax return for April - June of 2007 reported wages of \$24,231.98. The director found that these discrepancies called into question the petitioner's ability to document the statutory requirements of the petition and, accordingly, dismissed it.

On appeal, the petitioner stated that its gross sales in 2007 will exceed its projection of \$1,000,000. In support of that assertion, the petitioner submitted a profit and loss statement showing total income through September of 1997 of \$734,155.02. It also submitted a balance sheet. It is not clear from the record who prepared these financial statements and the statements are not supported by corroborating financial documentation. The petitioner did submit, however, copies of bank statements indicating that it had operational corporate bank accounts detailing deposits in September of 2007 of \$119,990.67, August of 2007 of \$94,252.05, and July of 2007 of \$79,550.42, etc. The petitioner provided copies of client invoices totaling \$803,371.60 which further corroborates its business activities. The petitioner has supplied sufficient financial documentation to overcome the concerns of the director as to its business viability. As such, the director's decision is withdrawn.

This matter shall be remanded to the director to determine whether the proffered position qualifies as a specialty occupation and, if so, whether the beneficiary is qualified to perform the duties of the proffered position. The director may request such additional information as he deems necessary in rendering his decision. It should be noted that the petitioner is a consulting firm that provides employees to work on various client projects. As such, the director may request that the petitioner provide a complete itinerary for the beneficiary during his intended stay in the United States, copies of contracts under which the beneficiary be employed, and associated work orders from the end-users of the beneficiary's services specifically describing the duties to be performed by the beneficiary. The director may further request detailed documentation of any project that the beneficiary will be assigned to on an "in-house" basis by the petitioner.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner, shall be certified to the AAO for further review.