



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 12 2014 OFFICE: CALIFORNIA SERVICE CENTER

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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Ron Rosenberg
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 sustained. The petition will be approved.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2013. In the Form I-129 visa petition, the petitioner describes itself as a "Technology" business established in 1990. It seeks 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, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

On appeal, counsel asserts that the director erred in determining that the proffered position was not a specialty occupation. Counsel submits a brief and additional documentation in support of the appeal.

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

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record of proceeding, the AAO finds that the petitioner has overcome the director's sole ground for denying this petition. Accordingly, the appeal will be sustained, and the petition will be approved.

In the instant case, the petitioner has sufficiently developed relative specialization and complexity as an aspect of the proffered position. The AAO also observes that the petitioner will pay the beneficiary a wage rate significantly higher than that normally paid for a position involving a level of education, skill, and experience at the Level IV wage rate, which is consistent with and corresponds to a relatively specialized and complex position. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The totality of the evidence presented establishes that the nature of the specific duties proposed for this particular beneficiary is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of at least a U.S. bachelor's degree in a specific specialty, or its equivalent. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Further, the petitioner has established that the proffered position otherwise qualifies for classification as a specialty occupation as that term is defined by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In addition, the AAO has reviewed the qualifications of the beneficiary and finds that, more likely than not, he is qualified to perform the duties of the proffered position based on the evidence presented.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.