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FEB 02 2007

FILE: WAC 05 217 50331 Office: CALIFORNIA SERVICE CENTER Date:

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 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 is engaged in the business of pre-paid phone card distributorship for domestic and international usage. It seeks to employ the beneficiary as a budget analyst and endeavors to classify her 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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 with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a budget analyst. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Coordinate, organize, and examine financial records and budget requirements, along with various economic circumstances, which requires identification and extraction of financial data, combined with the evaluation, analysis, interpretation, and summation of findings;
- Evaluate financial documents to forecast and determine the petitioner’s future economic position and budget requirements;
- Analyze factors such as income, growth, quality of management, market share, and potential risks of business;
- Examine and analyze statistical data and formulate business processes to improve cost efficiency and control budget needs;
- Inform and assist in the management of funds and major budget components;
- Provide detailed cost information and plan, study, and collect data to determine costs of business activities;
- Direct financial planning, investment of funds, and implementation of cash management strategies;
- Participate in the development of the petitioner’s annual operating plans that include specific economic information and forecasts that support the company’s operating budgets; and

- Prepare reports for submission to management specifying and comparing factors affecting process and profitability of services.

The petitioner requires a minimum of a bachelor's degree in business administration for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to fall within those noted for budget analysts, and under certain circumstance could qualify as a specialty occupation. In this instance, the duties of the offered position, as described by the petitioner, could be sufficiently specialized and complex that knowledge required to perform them could usually be associated with the attainment of a baccalaureate or higher degree and would meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). In addition to qualifying the proffered position as a specialty occupation, however, the petitioner must also demonstrate that the qualified nonimmigrant alien is coming temporarily to the United States to perform services in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). This, the petitioner has failed to do.

The only evidence of record that establishes that the petitioner is currently an operating business are the petitioner's unsubstantiated statements and copies of advertisements for various pre-paid telephone cards. The record does not establish that the petitioner is either the owner of these card brands, or the supplier of telephone minutes used by the cards. The petitioner has provided no evidence of its incorporation, that it has a business premises, or proof that it employs and pays the 11 employees it claims to employ on the Form I-129 petition. The petitioner states on the Form I-129 petition, that it had a gross annual income of \$25,000,000 when the petition was filed (August 2, 2005). Counsel states on appeal, and in his response to the director's request for evidence (dated October 3, 2005), that the petitioner has gross revenues totaling in excess of \$39,960,000, and retained earnings exceeding \$300,000 (as of the end of the 2004 tax period). The petitioner has submitted no financial documentation to explain these inconsistencies, or to establish the scope of its financial operations, the complexity of its financial operations, or that it does in fact have any income or revenues that require the services of a budget analyst. Doubt cast on any aspect of the petitioner's proof may 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. 582, 591-92 (BIA 1988). The conflicting evidence is material to the claim in that it brings into the question the nature of the petitioner's business, and whether in fact it operates a business for which H-1B employment classification is warranted. It is incumbent upon the petitioner to establish by meaningful evidence the nature of its business operations and that it does in fact have employment in a specialty occupation available for the beneficiary for the time period requested in the Form I-129 petition. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Simply going on the 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 190 (Reg. Comm. 1972)). Based upon the foregoing, the petition must be denied.

Beyond the decision of the director, the beneficiary does not appear qualified to perform the duties of a specialty occupation. The beneficiary received a bachelor's degree in business administration from California American University. That university is not listed as an accredited university by the U.S. Department of

Education's Office of Post Secondary Education. <http://ope.ed.gov/accreditation/InstList.asp>.¹ As such, the degree conferred upon the beneficiary by that institution will not qualify her to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.

¹ The website for the university indicates that it has received approval to operate by the Bureau for Private Postsecondary and Vocational Education.