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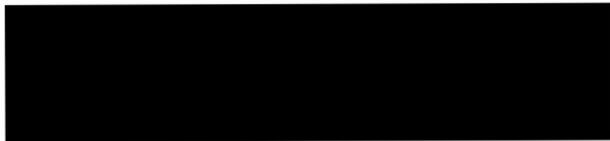
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: WAC 04 132 54448 Office: CALIFORNIA SERVICE CENTER Date: JAN 25 2007

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, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. Counsel for the petitioner addressed a motion to reopen the matter to the "District Director, who has jurisdiction over this matter," and submitted the motion to the California Service Center, "which has jurisdiction over this matter."

The AAO observes that the official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this matter the AAO. *See* 8 C.F.R. § 103.5(a)(1)(ii). Thus the matter is before the AAO on a motion to reopen and reconsider. The motion is granted. Upon consideration of the appeal, the appeal will be sustained. The petition will be approved.

The petitioner provides custom designed and installed home theatre rooms. It seeks to employ the beneficiary as a database administrator 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 determining that the petitioner had not established that the proffered position met the requirements of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO concurred in the director's decision.

On motion to reopen, counsel for the petitioner submits the declaration of Timothy V. Obrenski, an attorney who assisted in the preparation of the petitioner's response to the director's July 12, 2004 request for further evidence (RFE) and the appeal to the AAO. Counsel asserts that the declaration and catalogues submitted are new evidence. Mr. Obrenski affirms in his declaration: (1) that he personally visited the petitioner's business location and notes that the information for the various electronic components that can be integrated into one of the petitioner's home theatre systems is kept in loose leaf binders and catalogues; (2) that the equipment listed in the catalogues includes size specifications, electrical engineering data and other detailed information; (3) that the petitioner's employees must manually search through the tremendous amount of information and data in the catalogues and brochures to find compatible combinations of equipment; (4) that the petitioner needs to place all the information contained in these various catalogues and brochures on a computer database that can be used in the petitioner's store and on laptops utilized by the petitioner's representatives in customer's homes; (5) that due to the voluminous amount of information from over 700 manufacturers and the nature of the petitioner's business the beneficiary will be required to establish a database that will handle the large amount of information, be user friendly, and be accessible on the Internet, or an intranet; and (6) that the petitioner anticipates: it will take several months to develop the necessary database; an additional six months to have the information entered into the database by data entry clerks; an additional amount of time for the beneficiary to test the system, train users, adjust and change the system, and then upload the database to an Internet or intranet system for the petitioner's dealers to utilize; and time to provide technical support as the database is used.

In addition, counsel states that the motion for reconsideration is based on the failure of counsel to adequately present the extent and complexity of the data that needs to be utilized by the petitioner. Counsel asserts that although sufficient evidence was submitted, the complexity of the petitioner's data had not been properly presented.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The AAO finds that the information presented in the declaration of Mr. Obrenski and the submitted catalogues provides a new understanding of the duties of the proffered position. Mr. Obrenski's visit to the petitioner's worksite and declaration provides a clearer picture of the duties of the proffered position. The director and the AAO previously addressed the failure of the evidence to satisfy the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), and (3) and counsel appears to rely only on 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) as a basis to establish that the proffered position qualifies as a specialty occupation. The AAO finds, in this matter, that the nature of the duties of the proffered position as currently described and understood are so specialized or complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree. The tasks associated with the proffered position not only require a length of time due to the volume of data that must be organized and input, the skills used to perform the duties are skills that are attained through a four-year course of study at the university level in a specific discipline. The AAO's October 17, 2005 decision is withdrawn.

The petitioner has provided evidence of the beneficiary's foreign degree which an educational credentials evaluator has determined to be equivalent to a baccalaureate degree in theology from an accredited university in the United States. The beneficiary has six years of work experience in the field. The *Occupational Outlook Handbook* indicates that there is no universally accepted way to prepare for a job as a database administrator. While many employers seek applicants who have a bachelor's degree in computer science, information science or management information systems (MIS), persons with degrees in a variety of majors find employment in these occupations. The beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. The motion will be granted, the previous decision of the AAO as it relates to the issue of specialty occupation will be withdrawn, and the petition will be approved.

**ORDER:** The October 17, 2005 decision of the AAO is withdrawn. The appeal is sustained. The petition is approved.