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JUL 12 2007

FILE: WAC 05 222 52699 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 Director, California Service Center, 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 a corporation engaged in the research, development and production of hair care products, including products to reverse the effects of hair loss and hair thinning. It seeks to employ the beneficiary as a chemist. The petitioner, therefore, endeavors 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 record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's RFE response; (4) the director's denial letter; and (5) the Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner, a corporation engaged in the research, development and production of hair care products, including products to reverse the effects of hair loss and hair thinning, has 4 employees, was established in 1994 and has a gross annual income of \$448,908. It proposes to hire the beneficiary as a chemist. In its January 28, 2006 letter of support, the petitioner stated that the beneficiary's duties would include

Those which were are [sic] normal and customary for a company involved in the research and development, testing and production of products involving chemical solutions. They include the supervision and coordination of the activities of personnel and processes involved in the performing chemical and physical tests required for the development of chemical solutions for hair care products. Furthermore, the position will require a Chemist to develop and implement proper testing and quality control procedures for the processes and products we manufacture.

The Chemist will develop and implement special test procedures to analyze components and physical properties of the materials used in our products. She will compile and analyze test information to determine operating efficiency of process and equipment and to diagnose malfunctions.

She will make adjustments to the formulas and processes based upon the test results and analysis. She will conduct tests on sample products. She will prepare test solutions, compounds, and reagents for use by laboratory personnel in conducting tests. She will conduct research to develop custom products and investigate complaints on existing products.

The director denied the petition, finding that the petitioner had not demonstrated that there exists a reasonable and credible offer of employment. In his ruling, the director found that the petitioner did not show that the duties to be performed are normal and customary requirements in similar organizations in the petitioner's industry or

that the petitioner has the specific needs for such services for the period of time in which it intends to employ the individual. Despite finding that “the position of Chemist qualifies as a specialty occupation” as described in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*), the director found insufficient evidence to classify the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* states the following with regard to the employment of chemists:

Many chemists and materials scientists work in research and development (R&D). In basic research, they investigate properties, composition, and structure of matter and the laws that govern the combination of elements and reactions of substances. In applied R&D, they create new products and processes or improve existing ones, often using knowledge gained from basic research. For example, synthetic rubber and plastics resulted from research on small molecules uniting to form large ones, a process called polymerization. R&D chemists and materials scientists use computers and a wide variety of sophisticated laboratory instrumentation for modeling and simulation in their work.

Chemists also work in production and quality control in chemical manufacturing plants. They prepare instructions for plant workers that specify ingredients, mixing times, and temperatures for each stage in the process. They also monitor automated processes to ensure proper product yield and test samples of raw materials or finished products to ensure that they meet industry and government standards, including regulations governing pollution. Chemists report and document test results and analyze those results in hopes of improving existing theories or developing new test methods.

According to the *Handbook*, a position such as a chemist normally requires a bachelor’s degree in chemistry. Therefore, the position of chemist qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). However, in this matter the petitioner has not established that it will employ the beneficiary in the position of “chemist.”

In his decision, the director noted that a review of the tax returns submitted indicates that the petitioner is in the business of manufacturing plastic. The director also pointed out:

In the response for evidence the petitioner submitted an organizational chart however, the names and job titles for persons, if any, whose work will come under the control of the proposed position are not submitted as requested in the Request for Evidence.

The director referenced *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988) and observed that the burden is on the petitioner to resolve the inconsistencies in the record by independent objective evidence.

The AAO acknowledges that the occupation of "chemist" is a specialty occupation. However, the petitioner has not established that it will employ the beneficiary in the position of chemist. The record does not contain independent documentary evidence establishing the nature of the petitioner's business. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed for this position rather than describing the occupation. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In addition, as the director determined, the record contains an inconsistency regarding the petitioner's business operations. The petitioner's 2003 and 2004 Internal Revenue Service (IRS) Forms 1120-A, U.S. Corporation Short-Form Income Tax Return, indicates the petitioner's business is manufacturing plastics, while the petitioner claims on the Form I-129 that its business is involved in the import and production of hair products. The AAO notes counsel's assertion on the Form I-290B that all the documentary evidence submitted shows the petitioner's business in hair care and cosmetics; however, this assertion is contradictory to the evidence in the record. Moreover, counsel fails to address this issue on appeal. Neither counsel nor the petitioner offers an explanation or clarification regarding this inconsistency. 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. 582, 591 (BIA 1988). 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).

Further, the director observed that the petitioner's organizational chart failed to include the names and job titles for the persons, if any, whose work would come under the control of the proposed position, although this information had been requested in the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Again, the record does not contain sufficient evidence to establish the actual duties of the proffered position in relation to the petitioner's actual business operations. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this matter, as the record is inconsistent and lacking in independent documentary evidence regarding the petitioner's business, the AAO cannot find that the proffered position is a specialty occupation.

On appeal, counsel referenced a previous position that was filed by the petitioner for the services of a chemist and which the petitioner claims, was approved by the California Service Center. The AAO decision referenced by the petitioner is neither binding nor persuasive. It is not a precedent decision, that is, an AAO decision that has been designated and published as precedent in accordance with 8 C.F.R. §§ 103.3(c) and 103.9(a). While 8 C.F.R. 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the

administration of the Act, unpublished decisions are not similarly binding. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii), and the record presently before the AAO does not establish the proffered position as a specialty occupation.

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.