

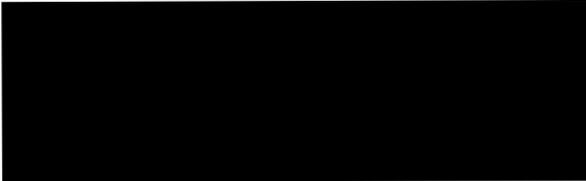
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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FILE: WAC 07 138 52923 Office: CALIFORNIA SERVICE CENTER Date: NOV 25 2008

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.

  
John F. Grissom, 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 provider of information technology staffing solutions and related consulting services. It seeks to employ the beneficiary as a computer systems analyst. 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 2008 fiscal-year cap for the issuance of H-1B visas, set by section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A), was reached on April 1, 2007. Although the petitioner filed the Form I-129 petition on April 2, 2007, the petition was accepted and adjudicated because the petitioner indicated on the Form I-129 that the beneficiary met the cap exemption criterion at section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), as a beneficiary who, in the words of the Act, “has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).”

The director denied the petition on the ground that the beneficiary did not meet the requirements specified in section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C), and thus the beneficiary was subject to the annual cap.

On appeal, counsel argues that the beneficiary completed all of the academic requirements for a master's degree in business administration from Anderson University on August 18, 2006. Counsel contends that even though Anderson University has not actually provided the beneficiary with his master's degree certificate because he has an outstanding balance for tuition and fees owed to the university, the university has confirmed three times that it conferred the master's degree on the beneficiary in August of 2006. Counsel contends that the beneficiary is exempt from the H-1B visa cap pursuant to 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C).

The AAO bases its decision upon its consideration of all of the evidence in the record of proceeding, including: (1) the petitioner's Form I-129 (Petition for Nonimmigrant Worker) and the supporting documentation filed with it; (2) the director's requests for evidence (RFE); (3) counsel's responses to the RFEs; (4) the director's denial letter; and (5) the Form I-290B, and supporting documentation.

Section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C) as modified by the American Competitiveness in the Twenty-first Century Act (AC21), Pub. L. No. 106-313 (October 17, 2000), states, in relevant part, that the H-1B cap shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) of the Act who “has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.”

On appeal, the petitioner submitted previously submitted documentation, including a copy of the beneficiary's "unofficial" transcript from Anderson University for his master's degree, which has not been endorsed to reflect that the degree was conferred; a second copy of the beneficiary's unofficial transcript from Anderson University for his master's degree, stamped "THIS IS A GRADE REPORT, NOT AN OFFICIAL TRANSCRIPT, Office of the Registrar" and endorsed "M.B.A. 08/18/06"; a letter, dated October 24, 2007, from the Director of the MBA Programs of the Master of Business Administration Program at Anderson University's Falls School of Business, asserting that the aforementioned unofficial transcript/grade report "accurately reflects the conferring of the Master of Business Administration degree on August 18, 2006"; a letter dated June 25, 2007, from the MBA Programs Director of the Master of Business Administration Program at Anderson University's Falls School of Business, asserting that the beneficiary "completed all of the coursework required for his Master's degree, Masters of Business Administration on August 25, 2006"; and an email, dated May 2, 2007, addressed to counsel from the MBA Programs Director of the Master of Business Administration Program at Anderson University's Falls School of Business, asserting as follows:

There are five specific requirements for graduation from the Anderson University MBA program:

1. Completion of 37 hours of required course work;
2. A cumulative 3.0 GPA in the 37 hours;
3. Submission of work portfolio;
4. Payment of all tuition and fees; [and]
5. Completion of all course requirements within five years.

[The beneficiary] has fulfilled requirements 1, 2, 3, and 5. However, there continues to be an outstanding balance related to tuition and fees.

The assertions from the MBA Programs Director of the Master of Business Administration Program at Anderson University's Falls School of Business are inconsistent. In his October 24, 2007 letter, he asserted that an MBA degree was conferred on the beneficiary on August 18, 2006, while in his June 25, 2007 letter, he asserted that the beneficiary completed all of the coursework required for his MBA on August 25, 2006. Then in his May 2, 2007 email to counsel, he indicated that the beneficiary did not fulfill one of the five "specific requirements for graduation from the Anderson University MBA program," namely that the beneficiary had not paid his tuition and fees. The record does not contain an explanation for these inconsistencies. 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). 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. at 591.

Although counsel argues that the reliance on the actual degree certificate is misplaced and inappropriate, the record contains insufficient evidence that a master's degree has been awarded to the beneficiary from Anderson University. The exemption criterion at section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C),

requires that the beneficiary earn a “master’s or higher degree from a United States institution of higher learning.” The evidence presented by the petitioner does not establish that the beneficiary earned a master’s degree from Anderson University before the Form I-129 petition was filed.

The evidence of record discussed above indicates that the beneficiary’s degree will be officially conferred upon payment of all tuition and fees. Therefore, the beneficiary has yet to earn a master’s degree from Anderson University. U.S. Citizenship and Immigration Services (USCIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The AAO finds that the evidence of record does not establish that the beneficiary is exempt from the H-1B visa cap under the requirements of section 214(g)(5)(C) of the Act, 8 U.S.C. § 1184(g)(5)(C) because the beneficiary had not earned a master’s degree at the time that the petition was filed. Accordingly, the AAO will not disturb the director’s denial of the petition

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 met that burden.

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