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FILE: WAC 07 148 54025 Office: CALIFORNIA SERVICE CENTER Date: **OCT 02 2008**

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:

SELF-REPRESENTED

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 of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal shall be summarily dismissed.

The petitioner is an information technology services and development business that seeks to employ the beneficiary as a programmer/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 director denied the petition, determining that the petitioner had not established that it qualifies as a U.S. employer or agent, that it has sufficient work for the requested period of intended employment, that a reasonable and credible offer of employment exists, that the proffered position is a specialty occupation, or that the labor condition application (LCA) is valid.

The record of proceeding before the AAO contains: (1) the 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 Form I-290B, with the petitioner's letter and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 is 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

In a March 26, 2007 letter submitted in support of the petition, the petitioner described the time allocations of the proffered programmer/analyst position as spending 60% of the time performing programming-related duties and the remaining 40% performing user requirements analysis. The petitioner further described the proposed duties follows:

Perform the functions of user requirements, design analysis and programming of computer software systems; analyze the users' data, provide record keeping and general modes of operation, and devise methods and approaches to solve the users' needs.

Format designs, make technical decisions, implement and maintain sophisticated commercial and financial systems, and design and develop new database files; consult with management, and evaluate problems and needs for further expansion, hardware/software interface, and machine operation optimization.

The record also includes a certified LCA submitted at the time of filing, listing the beneficiary's work locations in Farmington Hills, Michigan and "Metro Detroit," Michigan as a programmer analyst.

In an RFE, the director requested additional information from the petitioner, including an itinerary and copies of contracts between the petitioner and its clients for whom the beneficiary would be performing services, along with any statements of work/work orders, and/or service agreements for the beneficiary. The director also requested the petitioner's 2005 and 2006 federal income tax returns.

In response to the RFE, the petitioner's president stated that the petitioner was the actual employer with responsibility for paying the beneficiary and controlling her work. As supporting documentation, the petitioner submitted the following: the petitioner's 2005 and 2006 federal income tax returns; the petitioner's quarterly federal tax returns for the last quarter of 2006 and the first quarter of 2007; copies of the petitioner's projects, products, and applications; the petitioner's client list; an unsigned subcontractor agreement dated May 21, 2007, between the petitioner and Netstar Corporation; an independent contractor agreement dated April 3, 2006, between the petitioner and Clover Consulting, Inc. (Clover), for the petitioner to provide programming and analytical services to Clover and its customers; an unsigned subcontracting agreement, dated January 16, 2006, between the petitioner and Wolverine Technical Staffing, Inc., assigning one of the petitioner's employees to Wolverine Technical Staffing, Inc.; an independent contractor agreement, dated September 27, 2004, between the petitioner and Xede Consulting Group, Inc., for the petitioner to perform services as described in Exhibit A (which is not included in the record); letters of agreement between the petitioner and Epetic Group, assigning the petitioner's employees (other than the beneficiary) to perform temporary contract services; an agreement for information services, dated November 22, 2004, between the petitioner and Rapid Global Business Solutions, Inc., for the petitioner to provide information systems services to Rapid Global Business Solutions, Inc. and/or its clients; the petitioner's lease agreement; the petitioner's job announcements; a list of the petitioner's visa petition filings; and the petitioner's W-2 forms, bank statement, business licenses, and business profile.

The petitioner also submitted an employment agreement, dated March 14, 2007, between the petitioner and the beneficiary that stipulates as follows:

The Employer shall pay Employee a salary of \$19.94 per hour (\$41,475.20 per year) for the services of the Employee . . . Please note that this is the minimum wage the Employer promised to pay even though the employee is on bench. However, [the petitioner] has to terminate the employment and withdraw H-1B visa if the employee is on bench for three months. The Employee agrees that he or she shall be entirely responsible for his or her own status after [the petitioner] terminates the employment and fully understands that [the petitioner] cannot afford to pay bench employees for more than three months.

The director denied the petition on the basis of her determination that the petitioner had not demonstrated an authentic job offer, as the contract between the petitioner and the beneficiary does not list a job title or employment location, or guarantee full-time employment. The director also found that the petitioner had not demonstrated that it qualifies as either an employer or agent, as it has not submitted an itinerary or submitted any contracts with the petitioner's end-clients, for whom the beneficiary would be performing services. The director also found that, without such contracts, the petitioner had not demonstrated that the proffered position is a specialty occupation, that the petitioner has sufficient work for the requested period of intended employment, or that it has complied with the terms and conditions of the LCA.

On appeal, the petitioner submits copies of the following previously submitted documentation: the petitioner's projects and applications; a client list; and federal income tax returns for 2005 and 2006. On the Form I-290B and in its November 1, 2007 letter, however, the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

As the petitioner does not present additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding 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.