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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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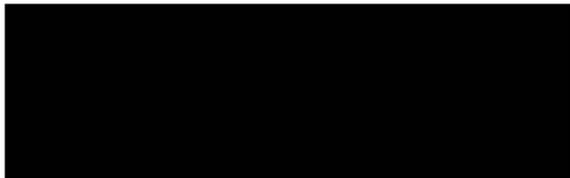
FILE: WAC 06 165 50674 Office: CALIFORNIA SERVICE CENTER Date: OCT 05 2009

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition by decision dated October 26, 2006. The matter was then appealed to the Administrative Appeals Office (AAO). By decision dated October 29, 2007, the AAO withdrew the director's decision and remanded the matter to the director for entry of a new decision, which would address the issues of whether the proffered position is a specialty occupation as well as whether the beneficiary is eligible to perform the duties of a specialty occupation in accordance with the relevant regulations on establishing a beneficiary as qualified for an H-1B visa. In response to the AAO's decision to remand, the director requested additional evidence from the petitioner on December 11, 2007. On March 4, 2008, the petitioner responded to the director's request, providing a cost/benefits analysis of maritime shipping prepared by the beneficiary, shipping instructions with email correspondence prepared by the beneficiary to clients and suppliers, and the same credential evaluation from the Foundation for International Services, Inc. with the beneficiary's education documents and experience letters that were submitted with the initial H-1B petition. The director again denied the nonimmigrant visa petition and certified the matter to the AAO for review on May 5, 2009. Upon review, the AAO will affirm the director's decision and deny the petition.

The record reflects that the petitioner was properly served with a notice of the director's certification to the AAO of her decision to deny the petition, and that the notice apprised the petitioner of its option to submit a brief in response to the certification within 30 days. As no brief has been received by the AAO, the record is complete and ready for adjudication.

The director based her certified decision on each of two independent grounds: (1) failure of the petitioner to establish that the position offered to the beneficiary is a specialty occupation under § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b); and (2) failure of the evidence of record to establish that the beneficiary satisfies the regulatory requirements under 8 C.F.R. § 214.2(h)(4)(iii) and therefore lacks the necessary qualifications to serve in the pertinent specialty occupation.

The AAO concurs with the director's decision. The findings articulated in the director's decision on the failure of the petitioner to establish that the proffered position is a specialty occupation is supported by the evidence of record and the director's decision to deny the petition comports with the relevant regulations. The AAO affirms the director's decision that sufficient evidence was not submitted by the petitioner to support the conclusion that the proffered position is that of a management analyst. Since it has been determined that the proffered position is not a specialty occupation, there is no requirement that the beneficiary's qualifications be examined. Nevertheless, the AAO also affirms the director's conclusion that the evidence submitted does not demonstrate that the beneficiary qualifies for a specialty occupation by virtue of his education, practical experience and/or specialized training and notes that in its decision to remand this case on October 29, 2007, the AAO made clear the reasons why the evidence submitted by the petitioner was not sufficient to demonstrate that the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation listed under 8 C.F.R. § 214.2(h)(4)(iii)(D). Ample opportunity was provided to the petitioner to submit additional evidence to demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C). However, in response to the request for additional evidence issued on December 11, 2007, the petitioner submitted the same credential evaluation from the Foundation for International Services and supporting documentation that the AAO previously found to be deficient.

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In visa petition proceedings, the burden of proving eligibility to the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed. The petition will be denied.

ORDER: The director's May 5, 2009 decision is affirmed. The petition is denied.