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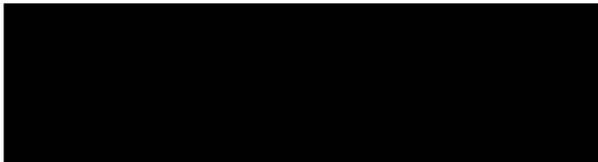
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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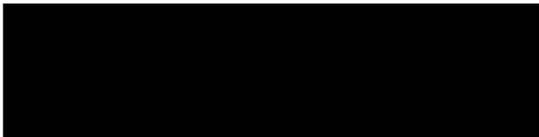
FEB 03 2010

FILE: WAC 08 150 51901 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.

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).

Perry Rhew
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 summarily dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it provides health care, that it was established in 1995, that it employs 56 personnel, and that it has a gross annual income of \$3,600,000. It seeks to employ the beneficiary as an operations engineer. Accordingly, the petitioner 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).

On October 7, 2008, the director denied the petition, determining that the petitioner failed to establish that the proffered position is a specialty occupation.

Counsel submitted a timely Form I-290B, Notice of Appeal on November 7, 2008 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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).

On the Form I-290B, counsel asserts that the director mischaracterized the beneficiary's duties by stating that the duties of the position more closely resembled the duties of an administrative services manager. Counsel contends that the duties of the proffered position are more closely aligned with the duties of an industrial engineer as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Counsel notes that the petitioner's description of duties directly correspond to the duties of an industrial engineer/operations engineer as listed on the Department of Labor's *Online O*NET (O*NET)*.

Counsel does not provide any further information or make any further statement addressing the director's decision. The AAO finds that counsel does not substantiate his disagreement with the director's analysis. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the AAO notes that a petitioner may not establish a proffered position is a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook*. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but may not be relied upon by a petitioner when discussing the duties attached to specific employment. In 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 but rather provided a general overview of the occupation. The petitioner, thus has failed to 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).

The AAO also notes counsel's reference to the *O*NET*. However, the AAO does not consider the *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP or Job Zone rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require.

Upon review of counsel's assertion on appeal, the AAO finds that counsel has not provided evidence or argument sufficient to demonstrate that the director made an erroneous conclusion of law or statement of fact when denying the petition. As neither the petitioner nor counsel presents additional evidence on appeal sufficient 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 summarily dismissed. The petition is denied.