



U.S. Citizenship
and Immigration
Services

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[Redacted]

DATE: **OCT 17 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
M Bailey

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

On the Form I-129 visa petition, the petitioner describes itself as an air cargo service company established in 1970. In order to employ the beneficiary in what it designates as an operations analyst position, the petitioner seeks to classify her 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 on June 27, 2011, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

On July 11, 2011, the petitioner submitted a Form I-290B (Notice of Appeal or Motion). In the appeal, the petitioner asserts that the beneficiary is qualified for the proffered position because of her language skills, ability to learn quickly, her academic coursework, and because the petitioner believes her to be a reliable person. The petitioner also expresses its disappointment in the decision to deny the petition. In addition, the petitioner claims that "[t]he decision seems very bias and discriminating against small companies."¹ The petitioner states that by approving the petition, the beneficiary will help the petitioner run its business "smoothly and progressively."

¹ It must be noted for the record that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006) (holding, in part, that USCIS did not abuse its discretion in considering the size of the potential employer's business as one factor in its analysis as to whether the position was a qualifying specialty occupation). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, the record should be reviewed for evidence that the petitioner's operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in or its equivalent in a specific specialty. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties.

In the instant case, the petitioner claims that the company's size was the primary reason for the director's denial of the petition. However, upon review of the Notice of Decision, the AAO finds that the director stated that the "specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the USCIS considers. Each position must be evaluated based upon the nature and complexity of the actual day-to-day duties to be performed with that specific employer." The director examined the ultimate employment of the beneficiary and determined that the petitioner failed to submit sufficient evidence to establish eligibility for the benefit sought. The size of the petitioner's business was considered as a factor (among others) in the director's analysis as to whether the position was a qualifying specialty occupation. The director concluded that the record contained insufficient evidence to establish that the proffered position qualified as a specialty occupation.

The AAO fully and in-detail reviewed the Form I-290B and the petitioner's written statement. However, the petitioner failed to identify any specific assignment of error. The petitioner does not specifically demonstrate how the director erred in concluding that it failed to demonstrate that the proffered position qualifies as a specialty occupation. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "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."

Upon review of the record, the AAO finds that the petitioner has failed to identify an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

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.