



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 18 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it is a "Retail Grocery" business, established in 2006. The petitioner indicates that it employs 4,134 personnel in the United States and had a gross annual income of \$90 billion when the petition was filed. It seeks to employ 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, finding that the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

Upon review of the entire record, including the additional documentation provided on appeal, we find that the petitioner has overcome the director's sole ground for denying this petition. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The evidence presented in this particular record of proceeding establishes that the beneficiary is more likely than not qualified to perform the duties of the proffered position. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1).

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The director's August 1, 2013 decision is withdrawn, and the petition is approved.