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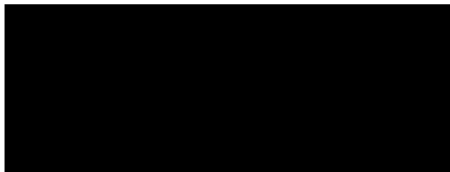
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
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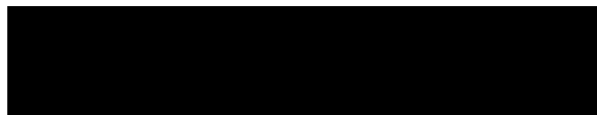
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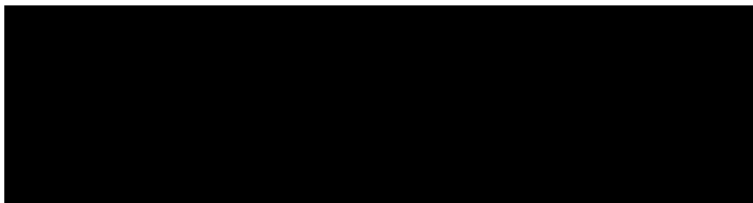
FILE: SRC 04 197 50743 Office: TEXAS SERVICE CENTER Date: JUN 25 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the service center director. Based upon information obtained from the beneficiary during her visa issuance process at the U.S. Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of her intent to revoke approval of the visa petition and her reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is engaged in the exploration and production of crude oil and natural gas, and the domestic refining, marketing and transportation of petroleum products. It seeks to employ the beneficiary as a part-time operations manager. 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 revoked the approval of the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

The record of proceeding before the AAO contains, in part: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (4) the director's approval letter; (5) the director's Notice of Intent to Revoke (NOIR); (6) counsel's response to the director's NOIR; (7) the director's revocation letter; and (8) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner is seeking the beneficiary's services as a part-time operations manager. The petitioner indicated that the proffered position requires a level of knowledge and expertise normally attained through the completion of a bachelor's degree in business management, marketing, or a related area, or an equivalent thereof.

The director found that the beneficiary was not qualified for the proffered position because during her interview at the U.S. embassy in the Philippines, she demonstrated a lack of knowledge of the proffered operations manager position and indicated that perhaps she would serve as a secretary for the petitioner instead. On appeal, counsel states, in part, that the director confused the instant case with another, as she stated that the petitioner was an engineering and software consulting business with the name of "Acumen." Counsel states further that the director's NOIR was too broad, based on speculation, and did not afford the petitioner any specific evidence to review in order to prepare a response. Counsel also states that the beneficiary's friendship with the petitioner's managing partner strengthens her qualifications, and that the proffered position requires knowledge of business theory and business principles, not knowledge of the oil and gas industry. Counsel states that the beneficiary's foreign bachelor's degree in commerce with a major in business administration qualifies her for the proffered position.

At the outset, the AAO disagrees with counsel's assertion that the director confused the instant case with another. The AAO finds that that the director inadvertently identified the petitioner as an engineering and software consulting business with the name of "Acumen," but that the information discussed in the decision specifically relates to the petitioner, the beneficiary, and the report from the consular officer.

Pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A), a director shall issue a notice of intent to revoke an approved Form I-129 petition if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition was not true and correct; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

The director's notice of intent to revoke and ultimate revocation of approval is based on the criterion at 8 C.F.R. §§ 214.2(h)(11)(iii)(A)(1) and (5). The AAO finds that the director adequately informed the petitioner of the deficiency of the petition and that the approval of the petition violated paragraph (h) of the regulation at 8 C.F.R. § 214.2 and that the beneficiary would not take up the position as described in the petition. The director notified the petitioner of the adverse information resulting from the beneficiary's interview and provided opportunity for the petitioner to rebut it. The NOIR is sufficient and a review of the record finds that the approval of the petition was in gross error.

The petitioner has not provided evidence that the beneficiary meets any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3). Thus the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In this matter, the beneficiary holds a foreign bachelor's degree with a major in business administration. The record contains a credentials evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the U.S. equivalent of a bachelor's degree in business administration with a specialization in management. The evaluator does not include analysis describing or otherwise explaining how the beneficiary's specific coursework resulted in the equivalent of a bachelor's degree in business administration with a concentration in management. The beneficiary's transcript does not include definitive information regarding the "management" courses taken by the beneficiary in pursuit of a bachelor's degree in business administration. The AAO is unable to conclude that the beneficiary has obtained the necessary specificity in an otherwise general discipline to perform the duties of a specialty occupation that requires a four-year degree in a specific discipline. A degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). In this matter, neither the beneficiary's transcripts nor the evaluation provide sufficient information to conclude that the beneficiary has a bachelor's degree in a specific discipline that directly relates to the proffered position. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The evaluation in this matter is not predicated upon a factual foundation as the evaluation does not include evidence or analysis of the beneficiary's foreign degree in commerce with a major in business administration as it relates to a bachelor's degree in business with a specialization in management. The record does not contain substantive evidence that the beneficiary has received a degree in a specific discipline directly related to the duties of a specialty occupation.

Beyond the decision of the director, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the evidence of record does not show that the proposed duties, which entail, in part, planning, directing, and managing the overall business operations, planning the use of materials and human resources, and performing market analysis, are so specialized and complex that their performance is usually associated with at least a bachelor's degree in a specific specialty. Further, the opinion rendered by the professor, who asserts that the proffered operations manager position requires a bachelor's degree in marketing, management, operations management, or a related field, or an equivalent thereof, is not probative. Despite his self-endorsement, neither the professor's letter, his resume, nor any other evidence of record substantiates that he is qualified as an expert on industry-wide recruiting and hiring practices regarding operations managers. Further, he does not provide any evidence in support of his assertion or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a degree in marketing, management, operations management, or a related field. The Department of Labor's *Occupational Outlook Handbook (Handbook)* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the Department of Labor, and indicates that there is no specific degree requirement for entry into the field. As referenced above, the AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable,

the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

It is also noted that the petition, which was signed by the petitioner's managing partner on July 8, 2004, reflects that the petitioner has 15 employees. The record, however, contains no evidence in support of this claim. The petitioner's quarterly tax report for the first quarter of 2004 reflects only 11 employees and the "number of employees" for the second quarter of 2004 was left blank. Further, the petitioner's 2002 and 2003 federal tax returns reflect only \$101,768.00 and \$126,199.00, respectively, paid in salaries and wages. Moreover, although the petitioner's "job profile" describes the proposed duties, in part, as directing the management of employees and supporting the technical staff and specialists, the record contains no organizational chart and/or job descriptions for such employees. As such, it is not clear what "technical staff and specialists" the beneficiary would be supporting. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings 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. The petition is denied.