

12 March 2012

USCIS I-290B  
PO Box 21100  
Phoenix, AZ 85036

Re: SLK Design's H1-b Petition for Ms. [REDACTED]  
EAC1202350999

Dear Immigration Officer:

We received your denial notice for the abovementioned case. We were surprised and shocked by this denial notice. This was a Premium Process case. It was our belief that the USCIS assigned its most experienced benefits adjudications officers to the Premium Processing Unit. This denial made us think otherwise. It is a careless and embarrassing denial notice, not even taking the documentation, information and materials submitted with the case into consideration. It is apparent (and unfortunate) that the denial notice implies that the Officer did not even review the record carefully, ignoring and misrepresenting facts. We believe this denial, with the attached denial notice, was a gross mistake on the part of the USCIS and we are asking you to overturn the denial decision. We are submitting the I-290 Motion to Reopen/ Reconsider (MTR) fee with this appeal. However, we are also asking the USCIS to waive the fee due to gross Service error and refund us the payment.

The Service denied this H-1b application asserting that we were not able to prove that the position in question, Business Development Manager, is not a specialty occupation. Moreover, the Officer concluded that we were not able to establish that the Beneficiary will not be performing "unqualifying duties". We are confident that we met our burden of establishing the position of Business Development Officer as a specialty occupation in the original petition and we further offered additional documentation concretely proving our point in our response to your Request for Evidence.

EFTA00537647

With this MTR, we will not make the same arguments again—rather, we are enclosing a complete copy of the initial application and our RFE response. We are confident that the record speaks for itself. Instead, we will point out the gross errors in the denial notice, which are embarrassing for the Service and are contradictory to the current Service policies and procedures, and which completely ignore the realities of business and commerce.

The Officer, whose badge number is not included in the denial notice, starts his/ her argument with the following paragraph:

The record shows your organization was established in 1997 as an interior design business. You have eight current employees, and unreported gross and net annual incomes. You seek to employ the beneficiary in the position of Business Development Manager for a temporary period of three years. You provided a certified labor condition application to include a signed statement that you will comply with the terms of the labor condition application. The beneficiary possesses a Bachelor of Commerce degree.

We are repeating ourselves but this is the **first paragraph of the Officer's denial notice** and the first two sentences are **completely false!** As our Form I-129 and supporting statements show, the business was established in **2010** and currently has only **one (1) employee**. Furthermore, it is clearly stated in the Form I-129 and the supporting documents that this is a **new business** and therefore no gross or annual income is available. Instead, we offered detailed bank statements of the Petitioner, proving that the business has enough finances to pay the Beneficiary's salary.

We don't know what the Officer was thinking about when he wrote those two sentences but apparently it was not our file. Such an error, by itself, should not be excused in the Federal government. We paid a petition fee, including the Premium Processing Service fee, for this case, expecting "service". Rather, we received a denial notice completely ignoring the facts of our case. This is unacceptable.

After this paragraph, the Officer continues with a list of the position duties we originally submitted, **ignoring** the expanded duties we sent with the RFE response, and then proceeds to discuss "Market Research Analyst Positions", **which is not even the position we filed for!** We filed this petition for a "Business Development Manager", which is a DOL recognized sub-

category of Market Research Analysts, but embodying different responsibilities. The Officer, on the other hand, wrote:

USCIS is not persuaded that the proffered position qualifies as a specialty occupation, because USCIS is not satisfied that the beneficiary will be performing services as a **market research analyst** only.

The specific duties of the offered position combined with the nature of your entity's business operations suggest a likelihood that the beneficiary will be performing a combination of market research analyst duties; e.g., sales and marketing and **non qualifying duties**.

A careful review of the record would have proven that the position offered, Business Development Manager, is not a traditional Market Research Analyst Position, requiring distinct and highly specialized duties and responsibilities. Instead, the Officer continues with a boilerplate discussion of Market Research Analyst positions in general, ignoring the specific position in question. This is also unacceptable.

The Officer then states:

Although the list of private industry employers is not **all-inclusive**, the DOL's description of a market research analyst's job **implies that these types of positions are found within large firms or corporations, such as banks or worldwide pharmaceutical companies.** [Emphasis Added]

We fully agree with the Officer that the DOL's list is not "all-inclusive". As the USCIS and several AAU decisions emphasized time and again, the Service should not mix apples and oranges while deciding cases. But this is what the Officer precisely does in the following paragraph:

The business of interior design in which your organization is engaged **is not within** the DOL's list of industries that typically require the services of a full-time individual who performs only market research analyst duties.

Even though the Officer clearly states that the DOL list is not "all-inclusive", he summarily concludes that interior design businesses are not on the list! The Officer makes no arguments qualifying this statement and ignores the record where we explained why the Petitioner needs a Business Development Manager in great detail. As we explained on the record, all businesses require business development and planning for their

success and survivor. This is more true for art businesses like interior design: Those artists, who usually lack the business acumen, rely on specialized professionals for their business development and planning. However, the Officer completely ignores the record and our documentation. Instead, the Officer continues with the following paragraphs:

In the OOH, the DOL states that "market research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales." While the duties described appear to involve some sales analysis, **they appear to be primarily those of an individual performing marketing duties.** Further, the interior design business in which you are engaged **is not within the DOL's list** of industries that typically require the services of a full-time individual who performs only market research analyst duties. For these reasons, USCIS is not **persuaded to label the offered position as a market research analyst position.** [Emphasis Added]

As we clearly established, the petition was for a **Business Development Manager** position, a specialized sub-category of "Market Research Analysts". Only a person who has not reviewed the record can make such a statement. We carefully outlined the job responsibilities and duties in great detail. Instead, the Officer simply concludes with "[w]hile the duties described appear to involve some sales analysis, they appear to be primarily those of an individual performing marketing duties". This statement, again, is embarrassing given the record in its entirety. Then the Officer mentions the DOL's list, which (s)he already established as "non all inclusive", but ignoring the "not all inclusive" part.

And, finally, the Officer writes that "[the] USCIS is not **persuaded to label the offered position as a market research analyst position**", which **makes no sense** to us at all. We filed for a Business Development Manager position and the Officer is concluding that the position cannot be labeled a "Market Research Analyst" position. As we carefully described in our application, the US DOL, not able to give position descriptions for each and every specific "job title" in the economy, utilizes generic job titles in the Dictionary of Occupational Titles, and, under each generic job title, it offers a sample list of "reported job titles" for that position. This makes perfect sense—employers, for a variety of reasons, use distinct job titles for similar or identical positions. The same is true for "market research analysts". As the DOL reports, some of the

reported job titles for market research analysts are: Market Research Analyst, Market Analyst, Project Manager, Market Research Consultant, Client Service and Consulting Manager, Market Research Manager, Product Line Manager, Business Development Specialist, Client Services Vice President, and Communications Specialist". As the DOL emphasizes in their Handbook, this is not an exhaustive list but rather a sampling of some of the most frequently used job titles.

The H-1b Petition we filed was for a "Business Development Manager", which is a reported title and a sub-category of Market Research Specialists, with distinct and specific job duties and responsibilities. Nevertheless, the Officer **ignores the entire record by making this statement.**

As we explained in great detail, Ms. [REDACTED] duties will be as follows:

- Quantitative and qualitative analysis of the interior design market (20%);
- Determining new client groups to focus on, based on the result of the analysis (10%);
- Prepare market, product, and demographics reports as well as financial forecasts and resource utilization reports based on needs (10%);
- Create business proposals in connection with the creative team (15%);
- Overall assistance in the growth strategy through the qualitative analysis of SLK Design and their competitors' e-commerce efforts (20%);
- Grow the business to reach financial targets of positive cash flow and profitability (15%); and
- Sourcing furniture and home décor materials according to budget (10%).

The Petitioner also clearly stated that the **Beneficiary will not be responsible for unqualifying duties.** Rather, these duties will be outsourced to other professionals and clerical staff. The Officer also **ignores** this. The Officer then concludes that:

As evidence that the offered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty, you submitted a description of the duties to be performed, as stated above. Although explained in greater detail, the duties which you submitted did not appear to be **of such complexity,**

**uniqueness, or specialization as to require the attainment of a bachelor's degree in a specific field of study** that consisted of the theoretical and practical application of a body of highly specialized knowledge. No new evidence was submitted in which to alter USCIS's conclusion regarding the nature of the proposed position. The duties as described fail to establish that the beneficiary will be employed within a specialty. [Emphasis Added]

Again we are at a loss here. As we explained in our RFE response:

The responsibilities listed above are highly technical and demand the services of someone with at least a bachelor's degree in business administration. For instance, to fulfill her responsibilities, she will analyze financial information to prepare reports, which summarize and forecast the company's business activity and financial position in areas of income, expenses, and earnings, based on past, present, and expected operations.

The analysis that Ms. [REDACTED] is going to perform, will provide all the essential information SLK Design needs about the tastes, attributes and preferences of their customers and it would go a long way in helping their customers serve better and build a loyal client base for their interior decoration business. This information can also be used to design an effective marketing campaign and a product mix that will be the key to SLK Design's future business fortunes.

Moreover, she will need to establish sustained growth strategies for the company by managing its resources and operations efficiently. These responsibilities extend from sourcing materials to coordinating their installation in a cost-efficient and timely manner. SLK design has a wide variety of home-décor design styles from traditional and eclectic styles to ethnic and contemporary styles. Currently, African interior design is one of the hottest ethnic styles. The main features of African interior design are impulsiveness, mystery, and simplicity. SLK Design uses such materials as: natural wood, ceramics, stone, African fabric and many other natural materials in the African style using various accessories, such as: figurines of gods and animals, various floor and table vases with exotic flowers and much more. Since Ms. [REDACTED] is from South Africa, she will be easily developing strategies for marketing materials, and attending trade fairs, especially

in interior design and construction materials, to find and secure vendors and unique building/ decoration materials in Africa. Therefore, her progressive experience in interior design in South Africa is an extremely valuable added benefit for SLK design.

In order to manage these duties, such as sourcing materials, commissioning drawings for the clients, and coordinating the installations and so forth, she must have an immense knowledge of interior design business and market as well. A person who does not understand the business simply cannot develop it. With the US equivalent of a Bachelor's degree in Business Administration and progressive experience in interior design business management, Ms. [REDACTED] is the perfect person for this job.

Unfortunately the Officer **completely ignores the record once again.** Once again, this is unacceptable. The Officer finally concludes that:

The duties do not establish that the beneficiary will be employed within a specialty occupation which warrants the expertise of a bachelor's degree recipient. The job duties **as described do not establish that the position qualifies as a specialty occupation.** It should be noted that it is not the title of a position that determines qualification. It is the duties and responsibilities and any supporting evidence that determine whether the position actually requires the theoretical and practical application of a highly specialized knowledge and the attainment of a baccalaureate degree in a specific specialty as a minimum for entry into the occupation as required by the Act. The duties and responsibilities of the position must be **based on the current size of the business as it stands today.**  
[Emphasis Added]

A summation like this, in the face of the entire record, is completely unacceptable and embarrassing: It ignores all the facts and documentation submitted. **This is a clear case of a Service Officer not reviewing the entire record and denying it while second-guessing the employer and the employer's business needs.** The Officer even makes a judgment regarding the businesses size and its needs while being completely ignorant to its real size as discussed above.

USCIS Officers should not second-guess the employers and their needs. They are trained this way. Service Officers are not interior designers or business professionals. Therefore,

they are not in a position to second-guess the bona fide needs of such professionals. But, besides ignoring the record in its entirety, this is precisely what the Officer did. The conclusions of the Officer, without a review of the record and serious factual errors and omissions, is a gross and unacceptable USCIS error.

The Petitioner is an accomplished interior designer, an artist. She clearly stated her need for a Business Development Manager and we described the position in great detail. We established, conclusively, that this is a highly specialized position. We would really like to see a layperson without specialized training and education undertake the responsibilities listed above. It is virtually impossible.

Therefore, given the record in its entirety, and given our arguments above, we are asking you to overturn this decision and approve this H-1b petition. Given all the gross errors and oversights in the denial notice, not doing so would be a travesty.

Should you have any questions regarding this case, please feel free to contact me at your convenience. Thanking you in advance for your prompt assistance in this matter, I am

Sincerely yours,

M. Arda Beskardes  
Attorney-at-Law