



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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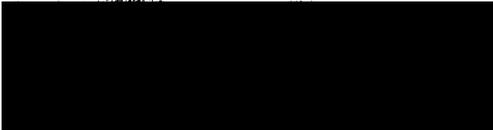
File: [Redacted] Office: VERMONT SERVICE CENTER

Date: AUG 19 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



**Public Copy**

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a company involved in international trade. It seeks to employ the beneficiary permanently in the United States as an interpreter. As required by statute, the petition was accompanied by certification from the Department of Labor.

The petition was approved on February 7, 1997. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on April 11, 2001. The revocation was based on the finding that the beneficiary did not have the required two years experience as a interpreter as required on the labor certification.

The director, in his revocation notice, stated in pertinent part that:

The Service notification of intent to revoke your Immigrant Petition for Alien Worker (Form I-140) advised you that when the petition was reviewed at the Boston district office, it was noted that the beneficiary's employment letter, written in English and allegedly from his Bulgarian employer stated that the beneficiary worked as an interpreter and as the U.S. representative for your company. The letter stated that his employment commenced in 1990, and continued until 1993. It was noted that from 1992, on the beneficiary was a full-time student at the University of Rochester in N.Y. The beneficiary could not have been working for your company on a full-time basis and attending the University of Rochester. It was additionally noted that it appeared highly unlikely that a company would hire a 17-year old to "actively participate in numerous trade negotiations." This letter was the beneficiary's sole basis for his claimed experience.

On December 13, 2000, this Service received your reply that consisted of a letter from the beneficiary dated December 6, 2000, indicating that he had attached a letter from his foreign employer, Garant Impex. The beneficiary also indicated that shortly before his employment terminated he enrolled at the University of

Rochester where he continued his translation work for his job. Also submitted was a letter from Garant Impex with a translation from the Boran translation agency indicating that the beneficiary had worked for [REDACTED] as an English, Russian and Bulgarian interpreter and was hired full-time for the period 1990 until mid 1993.

On appeal, counsel requests 60 days in which to submit a brief and/or evidence to the AAO and states that:

The INS erred and abused its discretion in revoking the I-140 petition.

The INS ignored the substantial evidence submitted that the beneficiary had two (2) years of experience required for this position.

The INS erred in revoking the petition based upon not fact, but upon an assumption that the beneficiary does not have the two (2) years of required work experience. The INS erred in finding that the beneficiary could not have worked and attended college at the same time.

The INS decision of April 11, 2001, is based upon surmise and conjecture and totally ignores the evidence of record.

No additional evidence has been received to date. The Application for Alien Employment Certification (Form ETA 750), filed with the Department of Labor on May 18, 1994, indicates that the minimum requirement to perform the job duties of the proffered position of interpreter is two years of experience in the job offered. Counsel submitted a letter from [REDACTED] testifying that it employed the beneficiary from 1990 to mid-1993 as an English, Russian, and Bulgarian interpreter. This documentation shows that the beneficiary had more than the two years of experience required before the filing of the labor certification and, therefore, meets the experience requirement of the labor certification. The regulations do not state that the experience may not be gained while attending college. There is nothing in the record indicating that the petitioner does not intend to employ the beneficiary in the job offered, under the terms and conditions described on the application for alien employment certification.

In addition, where a notice of intention to revoke is based on an unsupported statement or an unstated presumption, or where the petitioner is unaware and has not been advised of derogatory evidence, revocation of the visa petition cannot be sustained. See Matter of Estime, 19 I&N Dec. 450 (BIA 1987).



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 met that burden.

**ORDER:** The appeal is sustained.