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U.S. Citizenship  
and Immigration  
Services

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FILE: [redacted]  
EAC 00 167 51023

Office: VERMONT SERVICE CENTER

Date: JUN 14 2007

IN RE: Petitioner:  
Beneficiary:



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)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director, Vermont Service Center, initially approved the employment-based immigrant visa petition and then revoked its approval following a consular investigation in India of the petitioner's claimed business operations. Citizenship and Immigration Services' (CIS) electronic database reflects two revocation entries for the instant petition. The first revocation is dated in the CIS database as August 26, 2002 and the second on July 18, 2005. The record contains an I290B form filed by former counsel received by CIS on October 12, 2005. The record was then transferred to the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a computer software development/ and consulting company. It seeks to employ the beneficiary permanently in the United States as a software engineer.

The record only contains one letter of revocation dated September 20, 2002, as well as only one letter of intent to revoke (NOIR) the petition. This letter, dated November 30, 2001, is marked "No Response." In his NOIR letter, the director extensively described the findings of the consular investigation and stated that the beneficiary's claimed employer in India appeared to be the foreign job placement arm of the petitioner. The director included the report of the consular investigation and stated that the petitioner needed to explain its apparent fraudulent employment claim, the conflict of interest inherent in the beneficiary's claimed bogus work experience abroad, and had to submit bona fide evidence of the beneficiary's previous foreign work experience.

The record also contains a fax from an attorney named [REDACTED] to counsel for the instant petition dated January 9, 2002. This fax apparently contains guidance from [REDACTED] and an excerpt of correspondence from two persons identified as [REDACTED] and [REDACTED] with regard to the resubmission of petitions for affirmation of original approvals in which issues leading to letters of intent to revoke had been resolved. The excerpt also stated that an individual reply to each case should be prepared.<sup>1</sup>

The record also contains a letter from counsel for the instant petition dated December 17, 2001,<sup>2</sup> to the Vermont Service Center, along with a copy of the director's letter of intent to revoke the I-140 petition and a copy of a 1995 U.S. Department of Labor Field Memorandum entitled "Interim Procedures for Substituting Alien Beneficiaries on Approved Labor Certifications." In this letter, counsel referenced the instant petition's receipt number EAC 00 167 51023 and stated that the beneficiary was no longer employed by the petitioner identified as Software Technology International, and that the petitioner had previously notified CIS of this fact and had requested that CIS revoke the beneficiary's "H-1" petition on or about July 24, 2001. Counsel then requested that the director revoke the I-140 petition to which the director referred.<sup>3</sup>

The I-290 form submitted to the record on October 12, 2005 is marked that counsel is filing an appeal from the decision dated September 20, 2002, and that he is submitting the appeal on October 11, 2005. On the I-290B form, counsel states that no issues of fraud have ever been raised concerning the beneficiary or his work experience, and any other issues relating to the instant petition have already been resolved by prior CIS guidance. Counsel also notes that the petitioner's response to the CIS notice of Intent to Deny dated August 3, 2004 was not

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<sup>1</sup> The record is not clear as to whether the excerpt was submitted to the record on appeal or at an earlier date.

<sup>2</sup> This date is after the director's NOIR dated November 30, 2001 and before the director's September 20, 2002 decision to revoke the instant petition.

<sup>3</sup> Counsel appears to refer to the director's November 30, 2001 letter of intent to revoke the petition letter, based on the contents of the record.

comprised of mere assertions of counsel but contained valid, probative CIS guidance.<sup>4</sup>

Although counsel states that he is submitting a separate brief or evidence, no more evidence is found in the record that the AAO can determine was submitted with the I-290B form. As previously stated, there also is no letter dated August 3, 2005, or any other notice of intent to deny the instant petition found in the record. There is also no explanation provided by the Service Center or counsel for the submission of the record to the AAO, over four years after the initial revocation of the instant petition. CIS records do not indicate any subsequent reapproval of the instant petition, or the submission of any evidence or correspondence from counsel to the director with regard to any reapproval of the instant petition.<sup>5</sup>

It is noted that the director in his revocation decision provided counsel with 15 days from the date of the notice to submit an appeal and 18 days if the notice was received by mail. The record reflects that counsel submits his appeal over four years after the initial revocation of the petition on September 20, 2002, with no further explanation of his late submission. For this reason the AAO will summarily dismiss the appeal.<sup>6</sup>

Furthermore if the AAO were to examine the instant appeal, it can only review the brief comments counsel made on the Form I-190B. As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Based on the record, counsel's comment that no issue of fraud has ever been raised concerning the beneficiary or his work experience and that any other issues raised by the petitioner have been resolved is itself erroneous. The record reflects that both the notice of intent to revoke the instant petition and the actual revocation were based on alleged fraud, and there is no evidence in the record that any such issue in the instant petition was resolved pursuant to any Service Center guidance. In addition, as previously stated, counsel's comment with regard to a letter dated August 3, 2005, ostensibly a notice to deny a petition, is not supported by any evidence in the record. Thus, counsel has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.

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<sup>4</sup> There is no notice of intent to deny (NOID) the instant petition dated August 3, 2005 in the record.

<sup>5</sup> CIS records do indicate that at least three other companies have submitted primarily I-129 petitions for the beneficiary. Based on CIS database records, these petitions were either approved, or in two cases, revoked. These additional revoked petitions are not contained in the record. The record does contain an I-140 petition filed with the Nebraska Service Center on November 24, 2006 for the beneficiary, as a member of the professions holding an advanced degree. This petition was approved on December 29, 2006.

<sup>6</sup> The AAO notes that the appeal would be otherwise rejected for being late and there is no evidence that the Service Center wished to treat the appeal as a motion because of the late filing.