



D2

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: WAC-96-186-50873 Office: California Service Center

Date: MAY - 9 2001

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)

IN BEHALF OF PETITIONER:



identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was approved by the Director, California Service Center. Based upon information obtained from the beneficiary during her visa issuance process at the American 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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a California corporation which is engaged in the business of graphics design, desk top publishing, printing, and photography. At the time of filing, the firm had six employees and a gross annual income of \$400,000. It seeks to employ the beneficiary as a systems engineer/analyst. The director originally approved the nonimmigrant petition on July 26, 1996 and forwarded the petition to the United States Embassy at Manila, Philippines.

After receiving additional information from the United States Embassy, the director determined that "the beneficiary, by her own admission, is unable to perform the duties of position as described by the petitioner." Accordingly, the director properly issued a notice of intent to revoke. After the director failed to match the petitioner's response with the record, the director revoked the approval of the petition, stating that the office had not received any evidence in response to the notice.

On appeal, counsel stated:

See attached letter and supporting documents. Revocation was based on CSC's purported "non-receipt" of Applicant's response to Notice of Intent to Revoke. Such response was, in fact, timely submitted and received by the CSC, such that revocation is inappropriate. Instead, CSC should reconsider its revocation.

The director declined to treat the appeal as a motion to reopen or reconsider, and forwarded the appeal and the related record to the Associate Commissioner for review. 8 C.F.R. 103.3(a)(2).

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), provides in part for nonimmigrant classification of qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation, the beneficiary must hold full state licensure to

practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such a 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, the 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.

After the director approved the nonimmigrant petition, the beneficiary applied for the H-1B visa at the United States Embassy in Manila. As the director related in the notice of intent to revoke, "the beneficiary admitted that she had no knowledge of the design and installation of computer systems, could not evaluate operational systems and recommend design modifications, was unable to maintain computer hardware, and could not provide any of the other duties required by the position, as outlined in the Form I-129." The director further stated that the beneficiary had informed the consular official that she believed the petitioner was the sole author of the false statements contained in the Form I-129.

In response to the notice of intent to revoke, counsel asserted that the beneficiary was fully qualified for the proffered position and stated that "[i]t appears that the beneficiary has been questioned and forced to sign an untrue and incorrect statement." The petitioner submitted copies of the beneficiary's diploma and

school transcript in support of counsel's assertion. Counsel referred the director to these documents, which had been previously submitted for the record with the initial petition. The petitioner did not submit any new evidence in response to the director's notice of intent to revoke. The assertions of counsel do not constitute evidence. Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has not submitted any independent objective evidence that would explain the inconsistencies in the record. The petitioner did not provide any new evidence which would reconcile the inconsistent assertions made by the beneficiary and the claims made by the employer in the original petition. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.