



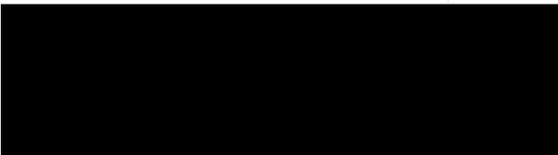
DA

U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-01-223-54949

Office: Vermont Service Center

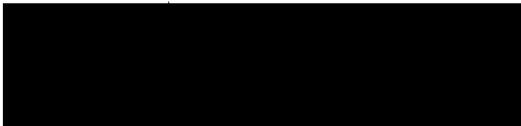
Date: AUG - 6 2002

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:



Public Copy

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be remanded.

The petitioner is an importer and wholesaler business with four employees and a gross annual income of \$2 million. It seeks to extend its authorization to employ the beneficiary as an accountant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel states, in part, that:

On or about July 6, 2001, this office filed a petition to extend the foregoing petition for [the beneficiary] as she was offered temporary employment as an accountant from October 6, 2001 to October 6, 2004 . . .

On or about September 7, 2001, I.N.S. issued its Notice of Intent to Revoke its February 11, 1999 approval of the H-1 petition for accountant . . . To rebut its conclusions, I.N.S. requested petitioner submit numerous documentation within thirty days.

On September 11, 2001, a terrorist attack destroyed the World Trade Center buildings in New York City . . . Immediately thereafter, law enforcement ordered a zone surrounding the site of the attack closed to non-residents and business tenants. Present counsel's office was inaccessible as it was within the closed zone . . . As a result, petitioner did not receive the Notice of Intent to Revoke until September 21, 2001 . . . As only a short period remained for the petitioner to respond, counsel made a written request to I.N.S. for a 45 day extension to respond . . . On October 23, 2001, I.N.S. denied the H-1B petition and application to extend the H-1B without consideration of petitioner's request for an extension of time to respond . . .

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 to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The issue in this case is whether the beneficiary is eligible for an extension of her H-1B status as an accountant. The director, however, has issued a notice of intent to revoke the approval of the petitioner's previously approved petition on behalf of the beneficiary under the file receipt number: EAC-99-001-51830. If the original petition is revoked, this petition would be moot. This petition will be remanded to the director to review the original petition for determination as to whether the original petition should be revoked in accordance with 8 C.F.R. 214.2(h)(11)(iii)(A) and (B).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of October 23, 2001, is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing.