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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

[Redacted]

File: EAC-98-123-53628 Office: Vermont Service Center

Date: SEP 25 2002

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

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:

[Redacted]

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INSTRUCTIONS:

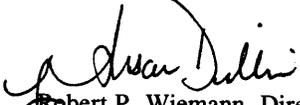
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center. Based upon information obtained in connection with other, separate petitions filed by the petitioner, the director served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore. The director subsequently approved the petition a second time, and then revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is an import/export business with 3 employees and a stated gross annual income of \$3 million. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director revoked the approval of the petition based on a determination that the petitioner had not established that the offered position is a specialty occupation or that the beneficiary qualifies to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(11)(B)(iii)(2) states in pertinent part:

The director may revoke a petition at any time, even after the expiration of the petition . . .

The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that the statement of facts contained in the petition was not true and correct.

The record shows that the director initially approved the petition on March 30, 1998.

On April 15, 1998. the director advised the petitioner in writing of his intent to revoke approval of the petition based on information obtained by the Service in other, separate visa petitions filed by the petitioner. Specifically, the petitioner identified the offered position as Vice President (Marketing and Sales) in a letter submitted in support of one petition and as Salesman in a letter submitted in support of another petition. The director stated:

The beneficiary's duties as described in that petition are those of a salesman, and clearly do not require the attainment of a bachelor's degree in a related field as a realistic minimum for their performance.

While the beneficiary's duties are outlined on the instant petition in a manner that would resemble those

commonly found for an actual market research analyst position, it appears as though the description was crafted for the purposes of procuring an immigration benefit for the beneficiary, not as an accurate depiction of his proposed day to day duties.

In light of the aforementioned discrepancies in the record, you have not persuasively demonstrated that a bachelor's degree or higher in a specific specialty is a realistic minimum qualification for entry into the position being offered to the beneficiary.

The director also found that the petitioner had not submitted sufficient evidence to show that the beneficiary is qualified to perform the duties of a specialty occupation.

In response to the notice of intent to revoke, counsel asserted that the petition identifying the position as that of a salesman was improperly filed by Hao Ding, an official of the company, without the authorization of the company. Counsel further asserted that the signature of the company's Chairman, Zhao Gesheng, on that petition is a forgery. Counsel asserted that the actual title of the proffered position is market research analyst, and that the duties of the position are so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a bachelor's degree in a specific field of study. Counsel further asserted that the beneficiary is qualified to perform the duties of the position based on his years of business experience.

On June 18, 1999, the director approved the petition for a second time.

On January 5, 2000, the director revoked the approval of the petition based on a conclusion that the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal to the revocation, counsel argues that the director's revocation of approval of the petition without service of a notice of intent to revoke is a procedural error and a violation of the regulations as set forth at 8 C.F.R. 214.2(h)(11)(i)(B)(iii).

The director improperly revoked the second approval of the petition without having served the petitioner with notice of his intent to revoke the approval of the petition and the reasons therefore.

The director must serve the petitioner with written notice of his intent to revoke the approval of the petition and the reasons therefore. The director must reexamine the evidence contained in

the record to determine whether the beneficiary qualifies to perform services in a specialty occupation and whether the proffered position is a specialty occupation. It is noted that the duties of the proffered position appear to be those of a marketing manager, rather than those of a market research analyst. According to the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 28, a wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background.

It is further noted that the record does not contain sufficient evidence to show that the beneficiary qualifies to perform the duties of a specialty occupation. The beneficiary does not have a baccalaureate or any other postsecondary degree. The petitioner submitted a credentials evaluation in which the evaluator, Bradley Spencer, finds the beneficiary's 16 2/3 years of work experience to be equivalent to a bachelor's degree in marketing from an accredited college or university in the United States. However, Mr. Spencer based his finding on the beneficiary's resume rather than on letters from the beneficiary's employers describing the duties of the work the beneficiary performed during his employment for those companies. Furthermore, the record does not contain an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Accordingly, the matter will be remanded to the director to make such determinations and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.