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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-01-080-51815 Office: Vermont Service Center Date: **SEP 30 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]

**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 petition was approved by the Director, Vermont Service Center. The director subsequently revoked 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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and action.

The petitioner is a computer software development and consulting business with 120 employees and an approximate gross annual income of \$9.1 million. It seeks to employ the beneficiary as a programmer analyst for a period of three years. The director stated that the approval of the petition was revoked at the request of the petitioner.

On appeal, counsel submits a statement.

The record shows that the petitioner filed a prior H-1B petition on behalf of the beneficiary in a separate proceeding (EAC-00-073-51775). That petition was approved on March 22, 2000. In a letter dated September 15, 2000, petitioner's president, [REDACTED] stated that the petitioner wished to withdraw the I-129 petition on behalf of the beneficiary. Accordingly, the director revoked the approval of the petition on January 30, 2001.

The petitioner subsequently filed a second petition on behalf of the same beneficiary on January 17, 2001. This petition was approved by the Service on April 16, 2001.

On November 30, 2001, the director issued a notice informing the petitioner of his intent to revoke approval of the petition based in part on information received from the American Consulate in Chennai, India. Specifically, the consular officer determined that the beneficiary's former employer in India is not a software development company as claimed on the beneficiary's resume, but rather a job placement arm of the petitioning entity. The consular officer stated that the Indian branch of the petitioning entity recruits university graduates, supplying them with software experience certificates, and purportedly providing the names of these "promising employees" to the petitioner in the United States. The director stated that it appears the beneficiary's claim to have related work experience in software development is fraudulent, and, therefore, the Service is no longer persuaded that the beneficiary qualifies to perform services in a specialty occupation. It is noted that this record of proceeding does not contain a copy of the adverse information referenced by the director in his notice of intent to revoke.

The director further stated that the petitioner has filed 351 nonimmigrant H-1B petitions and 102 employment-based immigrant petitions, while claiming to employ only 120 people. The director requested that the petitioner submit evidence to show that it is a

bona fide software development consulting company and that it has work for the beneficiary to perform at the H-1B level.

The director subsequently revoked approval of this petition on February 7, 2002. The director stated in the notice of revocation that the petitioner, in response to the notice of intent to revoke, submitted a request to revoke the petition. However, the record does not contain any correspondence from the petitioner requesting revocation of this petition.

On appeal, counsel states that the petitioner inadvertently informed the Service that the beneficiary was no longer employed by Software Technology International Corp. Counsel further states that the beneficiary continues to be employed by the petitioner and requests that the prior approval of this petition be reaffirmed.

The director improperly revoked the approval of the petition, since the record does not contain any correspondence from the petitioner requesting that the most current petition be withdrawn.

If the director wishes to revoke the approval of this petition based on the adverse information referenced in the prior notice of intent to revoke, he must incorporate the documentation from the American Consulate in Chennai into this record of proceeding. The director must then serve the petitioner with written notice of his intent to revoke the approval of the petition. The notice must contain a detailed statement of the grounds for the revocation. The director must also 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.

Accordingly, the matter will be remanded to him to make such a determination 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.