

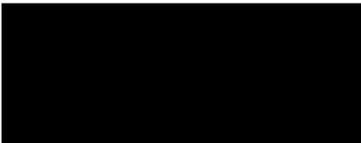
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



JUN 18 2003

File: SRC 99 229 51169

Office: TEXAS SERVICE CENTER

Date:

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

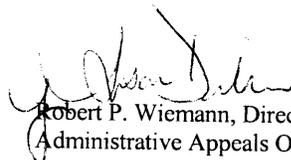
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The petition was approved by the Director, Texas Service Center. Based upon information obtained from the beneficiary during the visa issuance process at the American Consulate in Chennai, India, the director subsequently determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director served the petitioner with notice of his intent to revoke approval of the visa petition and the reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The matter will be remanded for additional action.

The petitioner is a computer services and consulting business with a projected total of three employees and a projected gross annual income of \$1 million for the year 1999. It seeks to employ the beneficiary as a systems analyst for a period of three years. The director revoked approval of the petition based on a determination that the petitioner had not shown that the beneficiary qualifies to perform services in the specialty occupation.

On appeal, counsel asserts that the beneficiary's educational credentials have been determined to be equivalent to a bachelor's degree from an accredited university in the United States. Counsel further asserts that the beneficiary has "very good industry experience in analysis and development of business systems and business process re-engineering."

The record shows that the director initially approved the petition on January 7, 2000, valid from January 7, 2000 until January 7, 2002.

When the beneficiary appeared at the U.S. Consulate in Chennai, India, for his visa interview, the consular officer determined that the beneficiary did not have the equivalent of a U.S. bachelor's degree in a specific specialty and, therefore, did not qualify to perform services in a specialty occupation. According to the Notice of Intent to Revoke, the consul ascertained that the beneficiary has only completed an associate degree and computer courses at a vocational institution. The consul returned the petition and its supporting documents to the Texas Service Center for review and possible revocation of approval of the petition.

On November 7, 2000, the director issued a notice informing the petitioner of his intent to revoke approval of the petition based

on the adverse information contained in the consular report and summarizing such information. The petitioner was afforded an opportunity to submit evidence to rebut the adverse evidence. The record shows the petitioner failed to respond to the director's notice. The director, therefore, revoked approval of the petition on March 21, 2001.

The record does not, however, contain a copy of the consular report upon which the director's decision was based. Revocation of approval of this petition cannot be based upon the adverse evidence contained in the consular report unless the report is contained in the record of proceeding.

Accordingly, the director must incorporate the consular report into the record of proceedings. If the director is unable to locate the report, she director shall issue a new decision based on the evidence of record.

ORDER: The matter is remanded to the director for consideration and action consistent with the foregoing. If the director issues a new decision that is adverse to the petitioner, the director shall certify her decision to the AAO for review.