



U.S. Citizenship
and Immigration
Services

07

[REDACTED]

FILE: SRC 01 080 51339 Office: TEXAS SERVICE CENTER Date: AUG 31 2004

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)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Maui Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
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DISCUSSION: The nonimmigrant visa petition was approved by the service center director. Based upon information obtained from the beneficiary during his visa issuance process at the U.S. consulate, 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 Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to her for further consideration.

The petitioner is a computer consulting business that seeks to employ the beneficiary as a programmer analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On appeal, counsel states, in part:

A response for the Notice of Intent to Revoke was mailed to the Texas Service Center via Federal Express on November 7, 2002 and received by the INS on November 8, 2002, well within 30 days from receipt of the notice of Intent to Revoke. Please see attached a copy of the Federal Express receipt evidencing that it was received at the INS on November 8, 2002, and a copy of the response letter.

The nonimmigrant visa petition was approved by the director on April 25, 2001. Based upon information obtained from the beneficiary by the consular officer, the director sent the petitioner a notice of intent to revoke on October 9, 2002. The record reflects that the petitioner sent a timely response that was received by the director on November 8, 2002. The approval of the petition was revoked on December 17, 2002. In her decision, the director noted, "[T]here is no evidence that you responded to the notice of intent to revoke within the additional time you were allowed." The decision of the director will be withdrawn and the petition remanded for further consideration.

In view of the foregoing, this case will be remanded for the director to consider the petitioner's response to the Notice of Intent to Revoke in accordance with 8 C.F.R. § 214.2(l)(9)(iii)(A) and (B). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of December 17, 2002, is withdrawn. The petition is remanded to the director for entry of a new decision in accordance with the foregoing.