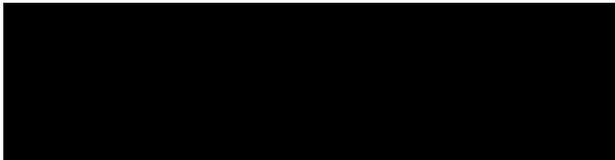




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



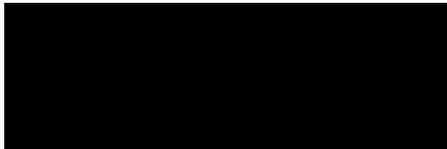
*DA*

FILE: SRC 00 195 51641 Office: TEXAS SERVICE CENTER Date: JUL 26 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:



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.

*Mari Johnson*

*for* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was approved by the service center director. Based upon information obtained from the beneficiary during a telephone conversation with 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 appeal will be dismissed.

The petitioner is a food services business that seeks to employ the beneficiary as a mechanical engineer. 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).

The record indicates that the petitioner did not respond to the director's March 26, 2002 Notice of Intent to Revoke. The director therefore revoked approval of the petition. On appeal, counsel submits a brief.

On review, the AAO agrees with the decision of the director. The record does not establish that the proffered position is a specialty occupation. As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's Notice of Intent to Revoke. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Should the petitioner wish that CIS consider the submitted evidence, the petitioner may file a new visa petition on the beneficiary's behalf that is supported by evidence that the beneficiary is entitled to the status sought under the immigration laws.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be revoked.

**ORDER:** The appeal is dismissed.