



U.S. Citizenship
and Immigration
Services

D-2

[Redacted]

FILE: LIN 02 209 53602 Office: NEBRASKA SERVICE CENTER Date: 02/22/2004

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.

Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

Administrative Appeals Office
U.S. Citizenship and Immigration Services
Department of Homeland Security

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. Based upon information obtained during the beneficiary's nonimmigrant visa interview process at the U.S. consulate, the director determined that the beneficiary was not eligible for the benefit sought. The director, therefore, properly served the petitioner with a notice of his intent to revoke the approval of the petition. The director ultimately revoked the approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer of high tech testing equipment for the automotive industry that seeks to employ the beneficiary as a management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 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 March 3, 2003, the director issued a notice of intent to revoke the approval based on information from the United States Consulate in Nicosia, Syria indicating that the beneficiary needed a translator to complete her interview. The Consulate and Citizenship and Immigration Services (CIS), in its Notice of Intent to Revoke, found that the beneficiary would not be able to perform the proffered position without English skills. The petitioner was given 30 days to submit evidence in support of the petition and in opposition to the revocation. On March 25, 2003, the petitioner responded to the notice.

In response to the director's notice of intent to revoke, the petitioner stated that due to the nature of the position, and the lack of client contact, "100 percent proficiency in speaking English is not required." The petitioner stated that the duties of the position would include "planning, conducting, and supervising secondary and primary research as well as analyzing market size and definition." The petitioner also stated that it was aware of the beneficiary's weakness in spoken English and that she would be enrolled in language classes in addition to working for the petitioner.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's notice of intent to revoke approval of the petition; (5) the petitioner's response to the notice of intent to revoke; (6) the director's decision revoking approval of the petition; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. According to the letter of support submitted with the petition, the beneficiary would perform duties that entail: planning, conducting, and supervising programs involving secondary and primary research; compiling and analyzing data from external and internal sources; designing and conducting studies, identifying and analyzing market size and definition, trends, competitive environments, and internal performance; designing and procuring reports of analysis, using qualitative and quantitative information research into proposed market strategy; and recommending strategic business objectives.

The director determined that the petitioner did not establish that the beneficiary would be able to fulfill the above-described duties, given her limited command of English. The petitioner submitted its company brochure, purchase orders with clients, and a licensing agreement with the National Aeronautics and Space

Administration. All of these documents are in English and all of the petitioner's clients appear to be U.S. companies located in the United States. Since the petitioner's need for research and analysis of data must therefore relate to U.S. clients, U.S. competitors, and trends in the U.S. market, it is unclear how the beneficiary would be able to perform any of the stated duties with limited English skills.

On appeal, the petitioner provides results of the beneficiary's Test of English as a Foreign Language (TOEFL). The petitioner states that the scores are "clear evidence of [the beneficiary's] competency in English." To the contrary, the scores provide little information in the absence of any explanation of their relevance. The possible scores for each of three sections range from 0 to 30. The beneficiary scored 16 on one section and 13 on each of the other two sections. The petitioner provides no context for these scores, but in simply looking at the numbers, it appears that the beneficiary scored lower than 50 percent on two of the topics, and just above 50 percent on the third. Her total score is 140, which is less than what is required by many United States colleges and universities for entry, according to various Internet sites. Again, with no information provided about what the scores actually represent, it appears that the beneficiary has limited skills in the areas tested, is unable to perform the duties of the proffered position, and is not coming temporarily to perform services in accordance with section 101(a)(15)(H)(i)(b) of the Act, 8 C.F.R. § 214.2(h)(1)(ii)(B).

Under CIS regulations, the approval of an H nonimmigrant worker petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(h)(11)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(h)(11)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Referring to the eligibility criteria at 8 C.F.R. § 214.2(h)(4)(iii), the director reviewed the rebuttal evidence and concluded that the beneficiary could not perform the duties of the position. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(h)(11)(iii)(A)(5): "Approval of the petition violated paragraph (h)" of 8 C.F.R. § 214.2, in that the beneficiary could not immediately begin performing the duties of the position upon her arrival in the United States. The AAO concurs with the director's findings.

Since the beneficiary could not perform the duties of the proffered position, the director properly revoked approval of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.