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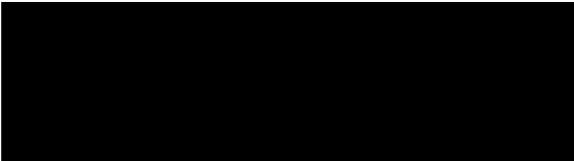
FILE: SRC 01 111 53924 Office: TEXAS SERVICE CENTER Date:

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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. Based upon information received by the U.S. consulate in Ho Chi Minh City, Vietnam, the director served the petitioner a Notice of Intent to Revoke (NOIR), and ultimately revoked the approval on May 19, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an international consulting firm that seeks to employ the beneficiary as a market research 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).

The director approved the petition in a decision dated May 16, 2001. The U.S. Consulate in Ho Chi Minh City, Vietnam found information which cast doubt on the bona fides of the beneficiary's qualifications to perform the proposed duties; hence, the director issued the petitioner a NOIR on October 2, 2002, and afforded the petitioner 30 days from the date of receipt of the NOIR in which to submit evidence in rebuttal. The petitioner submitted a response not later than November 12, 2002, per the director's information, and as early as November 9, 2002, as claimed by the petitioner. In his Notice of Revocation, the director stated that the petitioner's response to the NOIR was untimely; however, the AAO finds that the response was timely.

The director nevertheless reviewed the petitioner's response and found that the petitioner did not overcome the reasons for revocation. The Notice of Revocation is dated incorrectly; it appears that the director issued the decision on May 19, 2003, rather than September 27, 2001. On appeal, the petitioner submits a brief and copies of material included in its response to the NOIR.

The AAO notes a typographical error in the director's decision to revoke the approval, which states that the approval was revoked pursuant to "Title 8, Part 214.2(h)(ii) of the Code of Federal Regulations." Referring to the NOIR, it is apparent that the revocation was issued pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(2), due to the director's finding that the petition contained untrue and incorrect statements of fact regarding the beneficiary's qualifications to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's NOIR; (3) the petitioner's response to the NOIR; (4) the director's Notice of Revocation; and (5) 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 market research analyst. The job description provided in the original filing indicated that proficiency in English was required for the proffered position. The petitioner stated in a job offer dated January 31, 2001 that it wished to hire the beneficiary because he possessed experience in customer service and business management and extensive knowledge of market conditions.

At his August 3, 2001 interview with the consular officer in Ho Chi Minh City, Vietnam, the beneficiary was unable to describe how he possessed experience in customer service or business management or extensive

knowledge of market conditions, as claimed by the petitioner. In addition, it was apparent that the beneficiary lacked proficiency in English.

In response to the NOIR and on appeal, counsel contends that the job requires only minimal English, which is contrary to the requirement mentioned in the original job description. The AAO points out that a petitioner cannot materially change a position's job responsibilities in response to a NOIR or on appeal. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Regarding the inconsistencies between the petitioner's original assertions about the beneficiary's job experience and the beneficiary's actual ability to describe the same type of experience to the consular officer, in response to the NOIR and on appeal, counsel simply provides his own assertions. The statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-9 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner failed to submit any competent objective evidence to resolve the material inconsistencies in the record. The AAO thus concurs with the director's conclusion that the information submitted in response to the NOIR failed to overcome the adverse evidence provided by the consular officer. 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.