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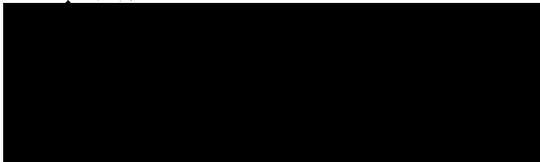


FILE: LIN 03 145 52413 Office: NEBRASKA SERVICE CENTER Date: AUG 10 2005

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.

for *Michael T. Kelly*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the Nebraska Service Center approved the nonimmigrant visa petition but subsequently revoked that approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The director's revocation of the approved petition will be withdrawn.

The petitioner is a full service mortgage company with 16 full-time employees. It seeks to hire the beneficiary as an economist. The director revoked the petition based on his determination that the petitioner had failed to overcome the grounds specified in his Notice of Intent Revoke (NOIR). The NOIR specified two grounds for considering revocation, both related to the beneficiary's qualifications to perform the duties of the petitioner's employment. These grounds were identified in a memorandum from a consular officer at the U.S. embassy in St. Petersburg, Russia. In pertinent part, the memorandum questioned the qualifications of the beneficiary based on the officer's observations that (1) his degree was conferred by an educational institution operating in a Marxist economy that did not deal with mortgages, and (2) he required training prior to assuming his duties.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the approval notice for the instant petition; (4) the Department of State memorandum raising concerns about the beneficiary's qualifications; (5) the director's NOIR; (6) counsel's response to the NOIR; (7) the director's revocation of approval; and (8) Form I-290B, with a statement from counsel. The AAO reviewed the record in its entirety before reaching its decision.

The only issue before the AAO is whether the petitioner has overcome the grounds for revocation specified in the NOIR.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The director's initial May 12, 2003 finding that the beneficiary was qualified to perform the duties of the proffered position was based on his determination that the petitioner had successfully met the requirements at 8 C.F.R. § 214.2(h)(4)(C)(2) -- the beneficiary holds the equivalent of a U.S. baccalaureate or higher degree required by the specialty occupation. However, based on concerns raised by the U.S. consulate in St. Petersburg, Russia, the director reviewed his previous findings and ultimately concluded that the petitioner had not established the beneficiary's qualifications to perform the duties of its proffered position. He revoked his approval of the petition on January 26, 2004. For the reasons discussed below, the AAO disagrees with the director's reasoning in revoking the approval of the instant petition.

The concerns that led to the director's revocation of the approved petition arose from a June 6, 2003 consular interview of the beneficiary and his spouse. The consular officer who conducted the interview concluded that the beneficiary's education, as it was obtained under the former Soviet educational system that emphasized Marxist and socialist economics, apparently could not prepare him for an economist's position in the United States. The consular officer also observed the apparent inconsistency between being qualified for a position and requiring training in that position. The director relied on these identical conclusions in issuing his NOIR and to support his revocation.

The consular officer's concerns are unsupported by independent evidence, and there is no indication that he has the expertise necessary to evaluate either the former Soviet educational system or the sufficiency of the beneficiary's academic record for the requirements of the proffered position. As a result, his statements regarding the beneficiary's educational background are not a sufficient basis for the revocation of the director's prior approval of the instant petition.

The director's revocation also relied on the consular officer's report of statements made by the beneficiary concerning his need for training before beginning work with the petitioner. The consular officer found these statements to be further evidence of the beneficiary's lack of expertise in the field of economics, and the director relied on this same reasoning to conclude that the beneficiary lacked the practical knowledge needed to perform the specialty occupation.

In this regard, the AAO notes that counsel contended, in his response to the director's notice of intent to deny, that the beneficiary's statements regarding training had been misunderstood. He asserted that the training in which the beneficiary had participated was a company seminar for all of the petitioner's employees and that the future training to which the beneficiary referred was intended to familiarize him with the petitioner's other employees, business operations and internal procedures, not to train him in the performance of economic analysis. This explanation does not conflict with the report submitted by the consular officer, which indicates only that the beneficiary stated he required training before undertaking his duties. The AAO, therefore, concludes that the training generically described by the consular officer could well be the orientation seminar(s) indicated by counsel.

The director's revocation also indicated that the petitioner had failed to provide evidence to establish that the academic evaluation submitted at the time of filing came from a reliable credentials evaluation service. The director found the evaluation to be questionable and, therefore, insufficient to demonstrate that the beneficiary held a foreign degree equivalent to a U.S. bachelor's degree. However, this deficiency was not identified by the director in the NOIR and, therefore, cannot be relied upon by him as a basis for revoking his previous approval of the instant petition. The language at 8 C.F.R. § 214.2(h)(11)(iii)(B) requires that a NOIR shall contain "a detailed statement of the grounds for the revocation." The NOIR in the instant case identified only the beneficiary's statements regarding his need for training and the consular officer's general suppositions about a Soviet degree in economics as the issues casting doubt on the beneficiary's qualifications to perform the duties of a specialty occupation. The documentation establishing the U.S. equivalence of the beneficiary's degree was not detailed as a concern.¹

Therefore, for the reasons just discussed, the AAO concludes that the director erred in basing his revocation of the instant petition on the concerns raised by the U.S. consulate in St. Petersburg and a deficiency not identified in his NOIR. As the petitioner has effectively refuted the grounds specified in the NOIR, the AAO will sustain the petitioner's appeal and withdraw the director's revocation 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 met that burden.

ORDER: The appeal is sustained. The revocation is withdrawn. The petition is approved.

¹ Furthermore, the AAO finds that the evaluation by Globe Language Services is sufficient to overcome lack of a degree in the requisite specialty as a ground for revocation.