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FILE:

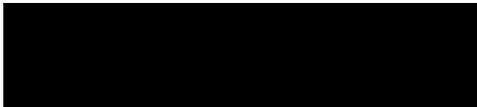


Office: VERMONT SERVICE CENTER

Date: JUL 06 2005

IN RE:

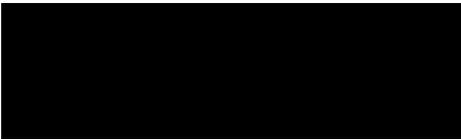
Petitioner:



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 director of the service center revoked the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision to revoke the petition will be withdrawn. The petition will be approved. The appeal will be sustained.

The petitioner provides software for computer-aided design. It seeks to employ the beneficiary as an application engineer. On February 7, 2000, CIS approved the petition in which the petitioner sought 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 November 18, 2003, the director revoked the instant H-1B petition. On appeal, counsel submits additional evidence.

The regulation at 8 C.F.R. § 214.2(h)(11)(B)(iii)(A) sets forth the grounds for the revocation of an approved petition. The regulation states that the director shall send to the petitioner a notice of intent to revoke the petition if:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition was not true and correct; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

The regulation at 8 C.F.R. § 214.2(h)(12)(B) states that "the notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal."

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's notice of intent to revoke the approved petition; (3) the petitioner's response to the notice; (4) the director's revocation letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The record reflects that on January 18, 2001, CIS accepted an oral complaint from a previous employer regarding the beneficiary. On June 17, 2003, CIS sent a notice of intent to revoke, which stated that based on an investigative report, the beneficiary's H-1B extension may have been erroneously granted. In the notice, the director stated that the beneficiary did not meet the employment conditions of her previous H-1B petition and misrepresented her intent. On November 18, 2003, the director revoked the instant petition stating that the petitioner failed to respond to the notice of intent to revoke.

On appeal, counsel submits an affidavit from the beneficiary and a copy of a letter, dated December 21, 2000, from the State of New Jersey Department of Labor, Wage Collection Section. In the affidavit, the beneficiary avers that the allegations of misconduct in the investigation are false. The beneficiary attests that she filed a complaint with the State of New Jersey Department of Labor against her prior employer for refusing to compensate her in accordance with the terms of the H-1B petition, and that because the State of New Jersey Department of Labor ordered the employer to pay her wages, an employee of the prior employer, in retaliation, contacted CIS and made false allegations against her. The letter from the State of New Jersey Department of Labor states that an award of \$934.52 was entered against the beneficiary's previous employer, and that the previous employer was to provide \$826.84 to the beneficiary.

The record reflects that CIS accepted an oral complaint from the beneficiary's previous employer regarding the beneficiary on January 18, 2001, which was made subsequent to the award granted to the beneficiary by the State of New Jersey Department of Labor on December 21, 2000. Based on the evidence in the record, the allegations in the oral complaint appear to have been motivated by a desire to retaliate against the beneficiary because of the decision by the State of New Jersey Department of Labor. Therefore, the petitioner has overcome the grounds of revocation.

As related in the discussion above, the petitioner has overcome the grounds of the director's decision to revoke the approved petition.

ORDER: The director's decision to revoke the petition will be withdrawn. The petition is approved.