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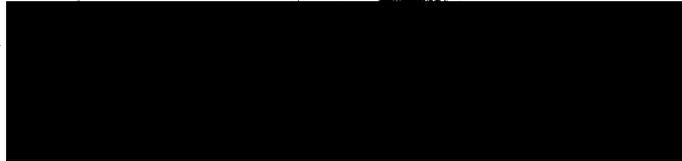
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D2



FILE: EAC 01 274 52558 Office: VERMONT SERVICE CENTER Date: JUN 15 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.

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 appeal will be dismissed. The petition will be revoked.

The petitioner, an automobile sales company, sought to employ the beneficiary as a full-time marketing analyst. On February 2, 2002, Citizenship and Immigration Services (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).

The director revoked the petition because the beneficiary is not employed in the occupation for which he was petitioned, and his wage is lower than what is indicated on the petition. On appeal, counsel submits additional and previously submitted 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 request for additional evidence dated December 7, 2001; (3) the petitioner’s response to the director’s request; (4) the director’s request for additional evidence dated October 11, 2002; (5) the response from the son of the beneficiary; (6) Form I-765 and accompanying documents submitted by the beneficiary’s son; (7) the director’s notice of intent to revoke the previously approved petition; (8) the petitioner’s response to the notice; (9) the director’s revocation letter; (10) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director's notice of intent to revoke contained a detailed statement of the ground for revocation. In the notice, the director stated that the petitioner intends to offer the beneficiary a substantial cut in his rate of pay, and that the beneficiary was working as an automobile salesperson, which is not a specialty occupation.

In response to the notice of intent to revoke, the petitioner's sales manager submitted a letter dated May 28, 2003. This letter described the beneficiary's duties, and stated that the beneficiary has been employed as a marketing analyst with the petitioner since February 2003, and that the petitioner has no intention of offering the beneficiary a substantial cut in his rate of pay.

The director revoked the petition on the ground that the beneficiary is not employed as a marketing analyst, the occupation for which he was petitioned, and that his wage is less than what is indicated on the petition. The director stated that in response to the notice of intent to deny, the petitioner's sales manager submitted inconsistent letters. The director found the submitted payroll stubs support the revocation of the approved petition, and that the roster of the petitioner's staff and the newsletters had little probative value because they could be easily altered.

On appeal, counsel submits a September 25, 2003 letter from the petitioner. This letter states that since the approval of the petition, the beneficiary has been employed as a marketing analyst, and that the beneficiary is paid the wage as shown on the petition, although the beneficiary is temporarily employed only 12 hours per week instead of 40 hours. The payroll stub, the petitioner states, reflects this reduction in hours. The petitioner states that the submitted evidence - the staff roster and newsletters - have not been altered.

Upon review of the record, the petitioner has failed to overcome the grounds for revocation of the approved petition.

The record reflects that the H-1B petition indicates that the petitioner sought the beneficiary's services as a full-time marketing analyst at an annual salary of \$36,000. The letter from the petitioner's sales manager, dated September 9, 2002, states that the beneficiary has been offered a salary of \$800 per month, instead of \$2,700 per month, due to an economic recession. The submitted payroll record reflects that the beneficiary is paid a bi-weekly salary of \$400.

The regulation at 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(I) states that a ground for the revocation of an approved petition occurs when the beneficiary is no longer employed by the petitioner in the capacity specified in the petition. In the May 28, 2003 the petitioner's sales manager states that the beneficiary has been employed as a marketing analyst, as that occupation is described in the petition and its accompanying documents, with the petitioner since February 2003. Nonetheless, the director properly concluded that the evidence in the record - the submitted newsletters and employee roster - do not persuasively establish that the beneficiary is employed as a marketing analyst. None of the beneficiary's duties as described in the approved petition and the accompanying documents involve creating newsletters. Furthermore, although the employee roster lists the beneficiary as occupying a marketing analyst job, no documentary evidence substantiates it. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft*

of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner fails to overcome the ground for revocation under 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(1).

Under 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(2), an approved petition is revocable if the statement of facts contained in the petition is not true and correct. Here, the pay stub evinces that the beneficiary will not receive the annual salary as shown in the approved petition; the petitioner states this is because the beneficiary will be employed part-time rather than full-time as indicated on the approved petition. Moreover, the submitted evidence fails to show that the beneficiary actually performs the duties of a marketing analyst as that occupation is delineated in the approved petition and its accompanying documents. Thus, the statement of facts contained in the petition, that the petitioner will employ the beneficiary's services as a marketing analyst upon the approval of the petition and will employ him on a full-time basis, is not true and correct. Consequently, the petitioner fails to overcome the ground for revocation under 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(2).

The regulation at 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(3) states that a violation of the terms and conditions of the approved petition is a ground for revocation of the approved petition. In this case, the evidence supports the director's determination that the petitioner significantly reduced the beneficiary's annual salary. The petitioner therefore violated the terms and conditions of the approved petition; as such, it fails to overcome the ground for revocation under 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(3).

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(4), an approved petition is revocable if the petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section. Based on the evidence in the record, the petitioner should have filed an amended petition to reflect the beneficiary no longer received the annual salary indicated on the approved petition, and his status changed from a full-time to part-time employee. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(E) requires that a petitioner file an amended or new petition to reflect any material changes in the terms and conditions of employment. Because the petitioner did not file an amended petition, it fails to overcome the ground for revocation under 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to overcome the grounds of revocation of the approved petition. Accordingly, the AAO shall not disturb 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 not sustained that burden.

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