

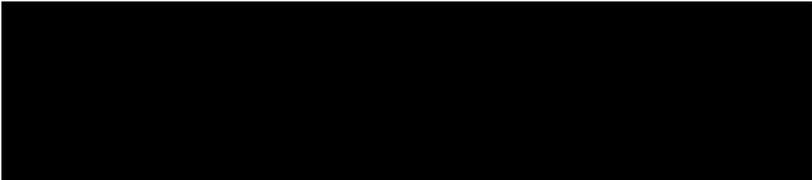


U.S. Citizenship
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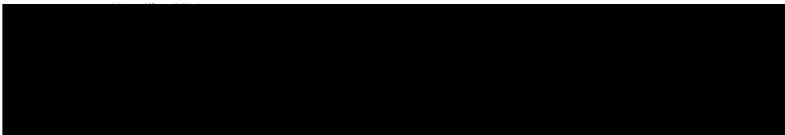
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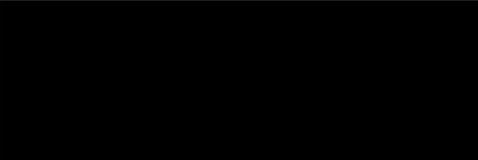
FILE: SRC 02 273 54881 Office: TEXAS SERVICE CENTER Date: **OCT 28 2005**

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 nonimmigrant visa petition was approved by the Texas Service Center on September 23, 2002. On April 13, 2004, a Notice of Intent to Revoke (NOIR) was served on the petitioner by mailing a copy of same, regular U.S. mail, to the petitioner's counsel. That notice set forth the grounds for revocation of the petitioner's Form I-129 petition, and informed the petitioner that it had 30 days in which to respond to the NOIR. The petitioner did not respond to the NOIR, and the petition was ultimately revoked on May 21, 2004. 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 supermarket. It seeks to employ the beneficiary as an operations manager, and endeavors to classify him 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's determination revoking the Form I-129 petition was based on the beneficiary's qualifications to perform the duties of a specialty occupation following receipt of a memorandum dated November 17, 2003, from the United States Consulate in Chennai, India (consulate). That memorandum stated that the beneficiary did not appear to be qualified to perform the duties of an operations manager by education or experience.

The record reflects that the NOIR was mailed to the petitioner's counsel at its address of record. On appeal, counsel states in her brief that neither she nor the petitioner received the NOIR and that the revocation was issued in error. Counsel has not rebutted the record's reflecting her receipt of the NOIR with any sworn testimony or other independent evidence. As previously noted, Citizenship and Immigration Services (CIS) did not receive a response to the NOIR and issued its revocation. The petitioner then appealed the revocation stating that neither the petitioner nor counsel ever received the NOIR. On appeal, counsel submits information that it had previously submitted to the consulate. The record indicates that the beneficiary apparently applied for his H-1B visa in India. His application and filing fee were, however, returned to him with a memorandum dated November 20, 2002, indicating that he did not appear eligible for an H-1B visa. Counsel then contacted the consulate inquiring as to why the visa application had been rejected and filing fees returned. Pursuant to request of the consulate office, counsel forwarded additional information on April 18, 2003, and May 16, 2003. Following receipt of the requested information, the consulate issued its memorandum of November 17, 2003, after having approved the beneficiary's visa request on June 4, 2003.

The record consists of the following: the United States Embassy (embassy) unsigned letter of November 20, 2002; the petitioner's correspondence dated April 18, 2003 and May 16, 2003 submitted in response to the embassy's request for additional evidence; the director's NOIR; and the director's revocation letter dated May 21, 2004. The AAO considered the record in its entirety before issuing a decision.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the beneficiary did not qualify to perform the duties of a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C). Approval of the petition constituted gross error, as the record does not establish that the petitioner is qualified by education, or experience equivalent to a bachelor's degree in a specific specialty, normally required to perform the duties of a specialty occupation. The director thus appropriately revoked the Form I-129 petition on the above stated grounds.

The record contains an experiential evaluation from J.B. Ringer Credential Evaluation, Inc., a credentials evaluation service. That evaluation found that the beneficiary possessed the equivalent of a Bachelor of Arts degree in business administration with a concentration in management based on his past education, training, and experience. While the credentials evaluation service made reference to an evaluation of the beneficiary's past work experience by Dr. [REDACTED] a professor at Texas A & M University, and stated that Dr. [REDACTED] found the beneficiary "... to be qualified for employment in an entry-level job requiring a Bachelor of Arts in Business Administration," the credentials evaluation service did not provide a copy of the referenced evaluation from Dr. [REDACTED]. Further, the record does not establish that Dr. [REDACTED] meets the regulatory requirement for issuing an experiential evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). There is no supporting documentation from Texas A & M University indicating that Dr. [REDACTED] has the authority to grant college level credit for training and/or experience in the specialty, and that Texas A & M has a program for granting such credit. As such, the evaluation submitted is of little evidentiary value and does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. Further, the record is insufficient for CIS to establish that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Beyond the decision of the director, the duties of the proffered position appear to be those of a supermarket manager. The *Handbook* does not indicate that a degree requirement, in a specific specialty, is normally the minimum requirement for entry into the proffered position. Further, the record does not establish any of the remaining requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) for establishing the position as a specialty occupation. For this additional reason, the revocation will not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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