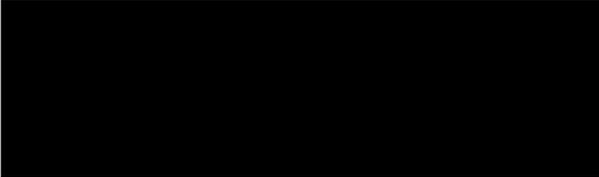


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**U.S. Citizenship
and Immigration
Services**

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02

FILE: LIN 02 018 56082 Office: NEBRASKA SERVICE CENTER Date: DEC 05 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The director of the Nebraska Service Center revoked the previously approved nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner provides long-term health care. It seeks to employ the beneficiary as a quality assurance coordinator 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 in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A).

The record of proceeding before the AAO contains: (1) the approved Form I-129 and supporting documentation; (2) the director's notice of intent to revoke (NOIR); (3) the director's August 17, 2005 notice of revocation; and (4) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

On October 22, 2001, the petitioner filed a Form I-129 petition to employ the beneficiary as a quality assurance coordinator in the H-1B visa category. The director approved the petition on May 6, 2002 with the validity dates of May 6, 2002 to November 1, 2004.

On June 10, 2005, the director notified the petitioner of her intent to revoke approval of the H-1B petition based on evidence, the petitioner's May 9, 2003 letter and its May 24, 2004 addendum to the employment contract, which indicated that the beneficiary was not working as a quality assurance coordinator. On August 17, 2005 the director revoked the H-1B petition.

The issue before the AAO is whether the director appropriately revoked the H-1B petition.

Pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A), a director shall issue a notice of intent to revoke an approved Form I-129 petition if he or she finds that:

- (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.

In her June 10, 2005 NOIR, the director stated that the proposed revocation of the petition under 8 C.F.R. § 214.2(h)(11)(iii)(A) is based on evidence from the petitioner: a letter dated May 9, 2003 addressed to the Nebraska Service Center and an addendum to the employment contract entered into between the petitioner and the beneficiary. The director found the evidence to indicate that the beneficiary is employed as a registered nurse, a nonspecialty occupation, instead of a quality assurance coordinator, as required by the approved H-1B petition.

Citizenship and Immigration Services (CIS) is authorized to revoke H-1B petitions approved in error or on the basis of incorrect information. Revocation is also justified if the conditions under which CIS approved the H-1B petition have altered, either because of a change in the beneficiary's employment or because the petitioner violated the language of section 101(a)(15)(H) of the Act, 8 U.S.C. § 1101(a)(15)(H), or 8 C.F.R. § 214.2(h), or the terms of the approved H-1B petition. A review of the NOIR indicates that the director revoked her approval of the instant petition based on her determination that the petitioner's May 9, 2003 letter and May 24, 2004 addendum to the employment contract reflect that the beneficiary is not employed as a quality assurance coordinator, as required by the Form I-129 petition.

On appeal, counsel states that the evidence of record does not support revocation of the approved petition. Counsel contends that the beneficiary is a licensed professional nurse working in the position of a quality assurance coordinator.

The AAO finds the evidence of record supports the director's revocation of the petition under 8 C.F.R. § 214.2(h)(11)(iii)(A). The petitioner's May 9, 2003 letter and May 24, 2004 addendum to the employment contract were provided to the United States Consulate in Manila, Philippines, by the beneficiary's husband when he applied for a derivative H-4 visa. The petitioner's letter states that the beneficiary is employed as a registered nurse with Heartland Health Care Center; it does not describe the beneficiary's job duties. The addendum to the employment contract states that the beneficiary will be employed as a registered nurse with Heartland Health Care Center, of which the petitioner is the parent company. The addendum does not describe the beneficiary's job duties. The AAO agrees with director's finding that counsel's response to the NOID is not persuasive in establishing that the beneficiary would work as a quality assurance coordinator with the petitioner. Essentially, in the response to the NOID counsel contends that revocation of the petition, on the basis that the petitioner's May 9, 2003 letter describes the position as a registered nurse performing quality assurance instead of a quality assurance coordinator, is arbitrary, capricious, and unsupported by substantial evidence. The AAO disagrees with counsel's interpretation of the letter: it does not describe the beneficiary as a registered nurse performing quality assurance duties; it clearly states that the beneficiary is employed as a registered nurse at Heartland Health Care Center – Plymouth Court. Thus, the letter does not evince that the beneficiary is employed with the petitioner as a quality assurance coordinator. Furthermore, the addendum to the employment contract reflects that the beneficiary would be employed as a registered nurse as it states "In the event of the death of [beneficiary], Registered Nurse Heartland Health Care Center – Ann Arbor. . ." Thus, the evidence reflects that the beneficiary is employed as a registered nurse, not a quality assurance coordinator, as required by the H-1B petition.

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.

LIN 02 018 56082

Page 4

The petitioner has the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

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