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U.S. Citizenship
and Immigration
Services

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FILE: LIN 00 105 50997 Office: NEBRASKA SERVICE CENTER

Date: JAN 18 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, Director
Administrative Appeals Office

DISCUSSION: The director initially approved the nonimmigrant visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR), and ultimately did revoke, approval of the petition. The Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision, and the director certified his decision to the AAO for review. The director's decision will be affirmed. The petition's approval will be revoked.

The petitioner is a printed circuit board manufacturer seeking to employ the beneficiary as a production manager. The petitioner, therefore, endeavors 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, filed on February 24, 2000; (2) the director's June 9, 2000 request for evidence; (3) the petitioner's July 29, 2000 response to the director's request and supporting documentation; (4) the director's approval of the petition, dated August 24, 2000; (5) the director's April 3, 2002 notice of intent to revoke the petition (NOIR); (6) the petitioner's May 2, 2002 response to the NOIR; (7) the director's July 23, 2002 revocation; (8) the Form I-290B and supporting documentation, filed on August 16, 2002; (9) the AAO's December 18, 2003 remand of the petition; (10) the director's August 6, 2004 notice of certification; and (11) counsel's August 16, 2004 response to the notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

After obtaining the H-1B approval notice, the beneficiary appeared at the United States consulate in New Delhi, India to obtain the visa. The interviewing officer determined that the beneficiary's work experience letter was fraudulent, and stated that he had admitted to working illegally in the United States between August 1999 and October 2000. The interviewing officer relayed these concerns to the service center, and the director, finding that these issues constituted good and sufficient cause, issued the NOIR on April 3, 2002.

The NOIR articulated the concerns of the interviewing officer and provided the petitioner 30 days during which to address these concerns. The director revoked the petition's approval on July 23, 2002, on the basis that the petitioner had not responded to the NOIR. The AAO remanded the petition to the director on December 18, 2003, after having been presented with evidence that confirmed the petitioner had in fact responded to the NOIR within the allotted timeframe.

As such, the director considered the evidence and issued a new decision. On August 6, 2004, he denied the petition and certified his decision to the AAO for review. The petitioner submitted a timely brief and supporting documentation, which the AAO received on August 27, 2004.

Counsel submits a brief in response to the director's notice of certification. A close inspection of the brief finds that it is virtually identical to the petitioner's May 2, 2002 response to the director's NOIR, which the director found insufficient to overcome the issues raised in his NOIR. Counsel is in essence resubmitting evidence and arguments already in the record, this time for the AAO's consideration. Upon review, the petitioner has failed to overcome the director's revocation.

Counsel asserts that the beneficiary says he did not admit to the consular officer that he had worked illegally in the United States between August 1999 and October 2000, which contradicts the testimony of the consular official in the embassy letter. The petitioner repeats this assertion. However, the AAO notes that there is no affidavit or other primary evidence directly from the beneficiary making such an assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.

533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In stating that the beneficiary did not admit to working illegally in the United States between August 1999 and October 2000, counsel and the petitioner contest the testimony of the consular official. Counsel also states that the beneficiary advised the petitioner that the work experience letter was “genuine and authentic,” again contradicting the express testimony of the consular official. The petitioner again repeats counsel’s assertion. Counsel asserts that “[i]t would appear that the [e]mbassy had not any investigation” but offers no evidence to document this claim. No evidence, such as testimony from the beneficiary, the beneficiary’s former employer, or other documentary evidence, is provided to contest the consular official’s statements.

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)).

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 because the petition contained statements (i.e., the referenced work experience letter) that were not true and correct. See 8 C.F.R. § 214.2(h)(11)(iii)(2). Moreover, since the work experience cannot be considered, approval of the petition was also 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).

Neither counsel nor the petitioner have offered any evidence to overcome the grounds for revocation, and the AAO will not withdraw the director’s decision.

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 director’s August 6, 2004 decision is affirmed. The approval of the petition is revoked.