



U.S. Citizenship
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Services

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DQ

FILE: SRC 05 041 51885 Office: TEXAS SERVICE CENTER Date: **AUG 03 2007**

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Texas 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 sustained. The decision of the director will be withdrawn. Approval of the petition is not revoked.

The petitioner is a landscape and lawn care company. It seeks to employ 6 named beneficiaries and 11 unnamed beneficiaries as landscape laborers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b). The director revoked the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A), citing to a CIS investigation of the attorney of record.

On appeal, at section 3 of the Form I-290B (Notice of Appeal) counsel submits a statement to the effect that the revocation in this proceeding violated due process.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation dated November 30, 2004; (2) the director's notice of intent to revoke (NOIR) dated February 21, 2007, (3) the director's March 15, 2007 notice of revocation; and, (4) current counsel's request for additional time to respond. The AAO reviewed the record in its entirety before issuing its decision. The AAO has not received the additional material that counsel indicated would follow within 120 days of the appeal. However, the AAO will proceed with adjudication as the record to date is sufficient to sustain the appeal.

On November 30, 2004, the petitioner filed Form I-129 to employ 6 named beneficiaries and 11 unnamed beneficiaries in the H-2B classification for the period January 2, 2004 to November 30, 2004. The director approved the Form I-129. On February 21, 2007, the director notified the petitioner of her intent to revoke the H-2B petition based on an investigation of the attorney on record. The director subsequently revoked the petition on March 15, 2007. The only issue before the AAO is whether the director appropriately revoked the H-2B 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:

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part 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.

(B) *Notice and decision.* 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 petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

As shall be evident below, the director's revocation actions have not complied with the notice and decision requirements of the Citizenship and Immigration Services (CIS) regulations on revocation.

On March 15, 2007, the director sent a notice of revocation. In the notice, the director cited from the notice of intent to revoke (NOIR), dated February 21, 2007, which stated that the "consulate questioned the legitimacy of the petition" since the petitioner utilized the services of [REDACTED] who is under investigation. The notice of revocation also asserted the following:

You responded to [the notice of intent to revoke] on March 9, 2007. Your response included a letter signed by [REDACTED] to request a hearing on the issues raised in the Intent to Revoke and demanding copies of all documents that resulted from the consulate's investigation. No evidence was submitted to document the legitimacy of this petition regarding [the petitioner] and the beneficiaries of this petition. You have failed to rebut the grounds of revocation. Additional time may not be granted.

As discussed above, CIS is authorized to revoke H-2B petitions approved in error or on the basis of incorrect information. Revocation is also justified if the conditions under which CIS approved the H-2B 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-2B petition.

The AAO finds that the content of the adverse information presented in the NOIR is insufficient to support a revocation of the director's approval of the H-2B petition's validity under 8 C.F.R. § 214.2(h)(11)(iii)(A). The following paragraph of the NOIR stated the grounds of the proposed revocation:

The petition was returned to the Service from the consulate in Monterrey after investigation. The consulate questioned the legitimacy of the petition. The petitioner utilized the services of [REDACTED] in Lake Park, GA 31626. Investigation reveals that numerous petitions have been filed by her using that same address and that beneficiaries of those petitions stated that they were required to pay the petitioner/agent various sums of money in order to obtain a visa. In addition, investigation indicated that some of the U.S. companies were fictitious business opened in order to apply for visas. The statement of facts contained in the petition appears to be in question.

The NOIR does not identify the petitioner as one of the fictitious businesses uncovered by investigation, does not identify the petitioner as the subject of beneficiary complaints, and does not identify the petitioner as having engaged in any activity that merits revocation. The NOIR does not specify evidence that the statement of facts contained in the petition was not true and correct; that this particular petitioner violated terms and conditions of the approved petition; that the petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or that approval of the petition merits revocation on any other basis provided at 8 C.F.R. § 214.2(h)(11)(iii)(A). The AAO specifically finds that notice of the fact that petitioner's counsel allegedly has been implicated in fraudulent activities with regard to other petitions does not constitute notice of a legitimate grounds for revocation under the relevant regulations for revocation. Accordingly, the NOIR issued in this proceeding did not provide notice of an adequate basis for revocation. For this reason alone the appeal must be sustained and the director's revocation decision must be withdrawn.

Further, the NOIR in this proceeding does not comply with requirements of 8 C.F.R. § 214.2(h)(11)(iii), that the NOIR preceding a director's decision to revoke a previously approved petition should: (1) specify the exact section or sections of 8 C.F.R. § 214.2(h)(11)(iii)(A) under which the director proposes to revoke the approved petition; and (2) for each section of 8 C.F.R. § 214.2(h)(10)(iii)(A) specified as a basis for revocation, present a detailed statement of the factual grounds that justify invoking that particular section. The NOIR here did not specify the particular provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A) upon which the director proposed to act. It also failed to present a detailed statement of the factual grounds upon which the director proposed to act. Accordingly, the AAO has determined that the substantive procedural requirement of an adequate NOIR has not been met. As the issuance of an adequate NOIR is a necessary condition precedent to making a decision to revoke an approved petition, the record lacks the substantive procedural basis for the director to make a revocation decision.

Aside from the fact that the NOIR was materially defective, the AAO also finds that counsel's general denial in response to the NOIR was sufficient to rebut the NOIR statements as they relate to the present approved petition, which statements are themselves general and unsubstantiated by evidence within the four corners of this record of proceeding.

ORDER: The appeal is sustained. The director's March 15, 2007 decision is withdrawn. The approval of the petition is not revoked.