



U.S. Citizenship
and Immigration
Services

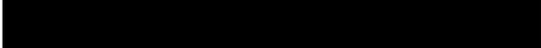
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

D2

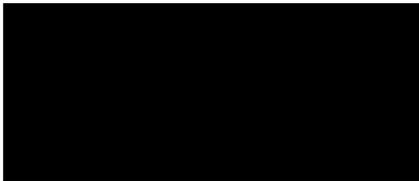


FILE: WAC 06 076 51547 Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 2007**
A 99 906 436

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the visa petition requesting an extension of the beneficiary's classification as an H-1B nonimmigrant on December 13, 2006. On June 11, 2007 the director revoked approval of the Form I-129 petition finding the beneficiary's eligibility to perform the duties of a specialty occupation was based on fraudulent documents. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner claims to provide financial services, to employ nine personnel, and to have had a gross annual income of \$150,000 when the petition was filed. It seeks to employ the beneficiary as a system analyst. Accordingly, the petitioner 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 includes in pertinent part: (1) the Form I-129 filed January 9, 2006; (2) a Form I-797, Notice of Action approving the beneficiary's classification as an H-1B nonimmigrant, valid from January 7, 2003 to January 6, 2006; (3) a copy of a diploma issued by the regents of Ashford University¹ awarding the beneficiary a bachelor of science degree in computer science on June 12, 1998; (4) a December 16, 2005 letter in support of the petition; and (5) the director's June 11, 2007 decision revoking approval of the petition. The record does not contain evidence that the director issued a notice of intent to revoke detailing the grounds for revocation.

In the June 11, 2007 revocation decision, the director observed that she had information that Ashford University (London) is an unaccredited university and that the Federal Trade Commission had attempted to close the Ashford University website. The director indicated that United States Immigration and Customs Enforcement Special (USICE) agents had interviewed the beneficiary on June 6, 2007 and that in that interview the beneficiary admitted he had not attended either Ashford University or California State University² and had not been awarded either a bachelor of science degree or a master degree in business administration, and in fact, had fabricated these degrees. The director determined that the petitioner, upon signing the Form I-129 had assumed responsibility for the truth and accuracy of the information submitted in support of the petition and that the petitioner had violated this responsibility by submitting falsified evidence. The director concluded that the petitioner, at the time of filing, had submitted fraudulent information pertaining to the beneficiary's education and that the beneficiary does not meet the requirements of eligibility to perform the duties of a specialty occupation. Thus, the director revoked approval of the petition.

¹ Neither the diploma nor the accompanying transcript identifies the location of Ashford University.

² The record contains a petition (WAC 07 176 50725) submitted by a different petitioner (New Century Business Services, Inc.) on May 25, 2007 that was denied by the Director, California Service Center, on June 11, 2007, and withdrawn by that petitioner in a letter dated July 10, 2007. Appended to the petition (WAC 07 176 50725) is a copy of a diploma issued by the Trustees of The California State University, Los Angeles awarding the beneficiary a masters degree in business administration on June 14, 2003. The diploma from California State University, Los Angeles was not submitted with the instant petition or the initially filed petition (WAC 03 067 53630).

On the Form I-290B, Notice of Appeal, counsel for the petitioner asserts: that the beneficiary has only admitted that he did not attend Ashford University as it is an online program; that the beneficiary was unaware Ashford University was an unaccredited program; that the beneficiary had attended California State University; and that the beneficiary had been awarded a degree from Ashford University (even if it was an unaccredited program) and a degree from California State University. Counsel requested an additional 30 days to submit a brief and evidence authenticating the California State University degree. In a later-filed brief counsel repeated the assertions listed on the Form I-290B and added that as the USICE agents had not offered evidence to suggest that the beneficiary's degree from California State University was not legitimate,³ the matter should be reopened, the revocation overturned, and the approval reinstated.

The AAO reviewed the record in its entirety before issuing its decision.

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.

The revocation of approval of the instant petition is based on several of the above criteria.

The record before the director when the instant petition was approved contained a degree from an unaccredited university. The record did not contain any other evidence establishing the beneficiary's eligibility to perform the duties of a specialty occupation. Thus, the approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2. See 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

³ The record in this matter, however, does contain a statement from [REDACTED], Director, International Programs and Services, California State University, Los Angeles, dated June 4, 2007, confirming that the beneficiary's name is not in its system and that the beneficiary did not graduate from California State University, Los Angeles.

The director determined that the petitioner is responsible for the truth and accuracy of the information submitted in support of the petition. The petitioner's submission of documentation from an unaccredited university violated the requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section. See 8 C.F.R. § 214.2(h)(11)(iii)(A)(4).

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). However, the regulations also require that the director issue a notice of intent to revoke to provide opportunity for the petitioner to rebut the grounds of revocation. As the record does not contain a notice of intent to revoke, the director's decision must be withdrawn and a new decision entered once the petitioner has the opportunity to rebut the grounds of revocation.

The AAO observes that the assertions set forth by counsel in support of the appeal do not overcome the evidence in the record before the director that the beneficiary was not qualified to perform the duties of a specialty occupation when the petition was filed. The AAO also notes that counsel on appeal accepts the truthfulness of the statements of the USICE agents and has not offered independent evidence to rebut their statements. Additionally, the AAO finds that counsel's assertion that the beneficiary had obtained a degree from California State University, Los Angeles allegedly in 2003 but that evidence of the degree was not submitted in support of a petition filed in January 2006 is not credible. The record contains the petitioner's December 20, 2002 letter and December 16, 2005 letter indicating the beneficiary worked in Indonesia from March 1999 to May of 2002. The beneficiary's California State University transcripts show he was also receiving credit for courses in the spring quarter in 2002 and the winter quarter in 2002.⁴ If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Moreover, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, although the director did not reference the information in the file from [REDACTED] University of California, Los Angeles, in the revocation decision, the petitioner had not established the relevance of the beneficiary's claimed master's degree in business administration from the University of California, Los Angeles to the issue of the beneficiary's eligibility to perform the services of a system analyst.

⁴ The California State University website indicates that the winter quarter began January 7, 2002 and the spring quarter began April 2002.

Of note, the AAO finds that the instant petition was filed January 9, 2006, after the beneficiary's previous H-1B classification had expired. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, with certain exceptions. In this matter, the petitioner has not demonstrated that the failure to timely file the application for extension of stay meets the requirements for any of the exceptions. The regulations also state, "[a] request for a petition extension may be filed *only if the validity of the original petition has not expired.*" 8 C.F.R. § 214.2(h)(14) (Emphasis added). Thus, the petitioner appears to have violated the requirements of section 101(a)(15)(H) of the Act and paragraph (h) of this section. See 8 C.F.R. § 214.2(h)(11)(iii)(A)(4).

This matter will be remanded for the director to issue a notice of intent to revoke containing a statement of all the grounds for revocation including any findings of fraud and according the petitioner 30 days to submit evidence in rebuttal, as provided in 8 C.F.R. § 214.2(h)(11)(iii)(B). If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 11, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.