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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: SCR 01 204 51544 Office: TEXAS SERVICE CENTER Date: JAN - 6 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Texas Service Center. The director thereafter served upon the petitioner a notice of her intent to revoke (NOIR) the approval of the I-129 petition, based upon information received from the Consular Section of the U.S. Embassy in Russia. The petition was subsequently revoked on June 19, 2002. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is involved in the development, marketing, and management of real estate. It has four employees, a gross annual income of $250,000, and employs the beneficiary as a project manager pursuant to the approval of an I-129 petition. The director initially determined that the offered position qualified as a specialty occupation, and that the beneficiary was qualified for the position.

The director received information from the Consular section of the U.S. Embassy in Russia that called into question the beneficiary's eligibility for H-1B classification. Specifically, the consular officer called into question: the beneficiary's qualifications to perform the duties of a specialty occupation based upon statements from the beneficiary's wife and documentary evidence; and whether the beneficiary was actually employed in the position described in the I-129 petition based upon statements made by the beneficiary's wife. Pursuant to that notification, the director served upon the petitioner a notice of intent to revoke the H-1B petition approval. The petitioner properly responded to the director's NOIR. The director thereafter revoked the I-129 petition, holding that the petitioner had not established that the beneficiary was actually employed in the proffered position. The director did not withdraw his prior findings with regard to the qualification of the offered position as a specialty occupation, or the beneficiary's qualification to perform the duties of a specialty occupation.

On appeal, counsel submits additional evidence. Specifically, counsel submits six affidavits indicating that the beneficiary is performing the duties of the offered position as those duties were described with submission of the I-129.

The only issue to be discussed in this proceeding is whether the beneficiary is performing the duties of the offered position, as the director has already determined that: the position qualifies as a specialty occupation; and the beneficiary is qualified to perform the duties of that occupation.

The director's decision was based entirely upon a lack of evidence indicating that the beneficiary was actually performing the duties of the specialty occupation. The affidavits submitted by counsel on appeal adequately address that concern. The beneficiary is, in fact, employed in the specialty occupation that is the subject of the I-129 petition. The evidence

presented in this regard is superior in content to that obtained by the consular officer based upon an interview with the beneficiary's wife in Russia, and is the best evidence available. The appeal shall, accordingly, be sustained, and the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.