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File: 
WAC-05-020-54146

Office: CALIFORNIA SERVICE CENTER Date: **SEP 24 2007**

In re: Petitioner: 
Beneficiary:

Petition: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a retailer that sells business machines and supplies, and provides rental and repair services for machines. The petitioner seeks to employ the beneficiary permanently in the United States as an electrical and electronic repairer, for commercial and industrial equipment (“Mechanical Engineer”). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director’s May 20, 2005 denial, the case was denied based on the petitioner’s failure to demonstrate that it can pay the beneficiary the proffered wage.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a skilled worker. Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The petitioner must establish that its ETA 750 job offer to the beneficiary is a realistic one. A petitioner’s filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA 750. The priority date is the date that Form ETA 750 Application for Alien Employment Certification was accepted for processing by any office within the employment service system of the Department of Labor. *See* 8 CFR § 204.5(d). Therefore, the petitioner must establish that the job offer was realistic as of the priority date, and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner’s ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the case at hand, the petitioner filed Form ETA 750 with the relevant state workforce agency on February 1, 2002. The proffered wage as stated on Form ETA 750 is \$21.39 per hour, 40 hours per week, which is equivalent to \$44,491.20 per year. The labor certification was approved on August 16, 2004, and the petitioner filed the I-140 on the beneficiary's behalf on October 28, 2004. Counsel listed the following information on the I-140 Petition related to the petitioning entity: date established: 1993; gross annual income: \$757,561.00; net annual income: \$382,606.00; and current number of employees: 8.

On January 10, 2005, the director issued a Request for Additional Evidence ("RFE") requesting additional documentation regarding the petitioner's ability to pay for the years 2002 and 2003, including federal tax returns or audited financial statements, along with quarterly wage reports submitted by the petitioner to the California Employment Development Department. The RFE additionally requested that the petitioner provide copies of the petitioner's business licenses, copies of the beneficiary's Forms W-2 for the years 2001 through 2004, as well as a current letter of employment identifying the beneficiary's title, duties, dates of employment and number of hours worked. The RFE also requested that the petitioner provide evidence regarding the beneficiary's prior experience.

In response to the RFE, counsel submitted the petitioner's 2002 and 2003 federal tax returns; quarterly wage reports filed with the state of California for the last four quarters; copies of the petitioner's business licenses; copies of the beneficiary's W-2 statements for the years 2001 to 2004; a letter confirming the beneficiary's employment with the petitioner; and letters to document the beneficiary's experience. The petition was denied on May 20, 2005. Counsel appealed and the matter is now before the AAO.

We will initially examine the petitioner's ability to pay based on the petitioner's prior history of wage payment to the beneficiary, if any. Regarding the petitioner's ability to pay, first, Citizenship & Immigration Services (CIS) will examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. On Form ETA 750B, signed by the beneficiary on January 21, 2002, the beneficiary listed that he has been employed with the petitioner from August 2001 to the present. The petitioner submitted the following W-2 Forms for the beneficiary:

<u>Year</u>	<u>Amount Paid</u>
2006 ²	\$44,490.96
2005	\$37,453.06
2004	\$23,763.05
2003	\$21,751.32
2002	\$19,938.71
2001	\$5,717.60

² On February 20, 2007, the AAO director issued an RFE related to a separate issue, which will be discussed below. The petitioner provided the beneficiary's 2005 and 2006 W-2 Forms along with the other documents requested. Based on the date of filing, and response to the RFE, the beneficiary's W-2 Forms would not have previously been available.

Based on the foregoing, the petitioner cannot establish its ability to pay the beneficiary based on prior wage payment alone, with the exception of the year 2005 where the combined wages and net income would surpass the proffered wage.³ The petitioner must show that it can pay the difference between the wages paid to the beneficiary and the proffered wage.

Next, we will examine the net income figure reflected on the petitioner's federal income tax returns. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income.

The petitioner is a C corporation. For a C corporation, CIS considers net income to be the figure shown on line 28, taxable income before net operating loss deduction and special deductions, of Form 1120 U.S. Corporation Income Tax Return, or the equivalent figure on line 24 of the Form 1120-A U.S. Corporation Short Form Tax Return. Line 28 of the tax returns demonstrates the following concerning the petitioner's ability to pay the proffered wage of \$44,491.20 per year:

<u>Tax year</u>	<u>Net income or (loss)</u>
2006 ⁴	\$54,798
2005	\$17,022
2004	\$10,813
2003	\$10,936
2002	\$11,048

Based on the above, the petitioner's net income would not allow for payment of the beneficiary's proffered wage, even if the wages paid to the beneficiary were added to the petitioner's net income.

As an alternative means of determining the petitioner's ability to pay the proffered wages, CIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁵ Current assets include cash on hand, inventories, and receivables expected to be converted to cash within one year. A corporation's current assets are shown on Schedule L, lines 1 through 6. Its current liabilities are shown on lines 16 through 18. If a corporation's net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets, and, thus, would evidence the petitioner's ability to pay. The net current assets, if available, would be converted to cash as the proffered wage becomes due.

³ We note that the wages paid to the beneficiary would only be 26 cents below the proffered wage in 2006.

⁴ The petitioner provided its 2005 and 2006 tax returns in response to the AAO director's RFE. The petitioner's 2005 and 2006 federal tax returns would not previously have been available based on the date that the petitioner filed the I-140.

⁵According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

In the denial issued, the director's decision notes that the "current assets do exceed the current liabilities but most of the petitioner's current assets are in inventory and allowances for bad debts. It is not clear how the petitioner would pay the beneficiary with these assets."

On appeal, counsel argues that based on the totality of the circumstances, the petitioner can pay the beneficiary the proffered wage. Counsel further provides that the petitioner had initial start up expenses, and that since the petitioner incorporated in 2002, the company was initially "trying to consolidate its market position and improve on its business." Further, the petitioner "invested heavily in the inventory, the copying machines and other machines used in business." The petitioner was able to lease out machines and received \$110,500 in leasing revenue in 2002, and \$119,325 in 2003, thus converting the extensive inventory noted in the director's decision to revenue and exhibiting the ability to pay the beneficiary the proffered wage by converting assets to revenue. The petitioner has submitted copies of sales receipts exhibiting the petitioner's purchases from All Leasing Services for equipment made by Canon, Toshiba, Lanier, and Sharp, which presumably are copiers or copy equipment. Counsel additionally cites to the fact that the petitioner's gross receipts have increased from \$688,862 in 2002 to \$757,561 in 2003 to \$819,286 in 2004, \$946,003 in 2005, and \$1,525,820 in 2006.^{6,7}

⁶ Counsel further provides that the petitioner's Chief Executive Officer has a certificate of deposit in the amount of \$50,671.22, which he is willing to use to pay the beneficiary. The petitioner here is structured as a C corporation, and therefore, personal assets of a shareholder would not be considered. In the case of a corporation, CIS may not "pierce the corporate veil" and look to the assets of the owner to satisfy the petitioner's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. Therefore, while the petitioner's CEO may have substantial individual assets, those assets are not relevant in the case at hand. Assets of the shareholders (or of other enterprises or corporations) cannot be considered in determining the petitioner's ability to pay the proffered wage.

⁷ Counsel also argues that the petitioner's depreciation in the amounts of \$4,839 for 2002; \$10,099 for 2003; and \$10,520 for 2004 should be added to the petitioner's net income, and would thus demonstrate the petitioner's ability to pay. With respect to depreciation, depreciation as a tax concept is a measure of the decline in the value of a business asset over time. See Internal Revenue Service, *Instructions for Form 4562, Depreciation and Amortization (Including Information on Listed Property)* (2004), at 1-2, available at <http://www.irs.gov/pub/irs-pdf/i4562.pdf>. Therefore, depreciation is a real cost of doing business.

The depreciation argument has previously been addressed by courts, and dismissed this argument accordingly. The court in *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989) noted:

Based on the petitioner's positive net current assets, which exceeds the proffered wage for the years 2002, 2003, and 2004, we find that the petitioner is able to demonstrate its ability to pay the beneficiary the proffered wage from the priority date until the beneficiary obtains permanent residence. Schedule L clearly exhibits the positive net current assets. Further, the petitioner has provided documentation to link the inventoried assets to sources readily available to lease out and generate further income. For the reasons discussed above, the evidence submitted on appeal overcomes the decision of the director.

Further, although not raised in the director's denial, we find that there is an issue related to the position's minimum qualifications. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis). The petitioner has listed different educational requirements on Form ETA 750, and on Form I-129, in a filing related to the beneficiary's nonimmigrant status for what appears to be the same position.

On June 29, 2001, the petitioner filed a Petition for a Nonimmigrant Worker, Form I-129, for a Mechanical Engineer pursuant to section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The petition was approved by the director.

The I-129 letter of support provided the following job description for the position of Mechanical Engineer:

[The beneficiary] will be responsible for researching the latest developments in digital copiers, color copiers, laser printers, laser fax, and other business machines. [The beneficiary] will also be responsible for the maintenance and repair of our highly technical rental business machines. Additionally, he will be tasked to design and develop a test repair system/tool that would enable the company to run a complete diagnostic check of the disabled business machine brought in for repair. Such test repair system/tool will help

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. *See Elatos*, 632 F. Supp. at 1054. [CIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng* at 537.

Therefore, the AAO is not persuaded that the petitioner's depreciation can show its ability to pay the proffered wage, which even if accepted, would not demonstrate the petitioner's ability to pay the proffered wage.

accurately pinpoint the problem, prevent misdiagnosis and reduce company liability.

Likewise [the beneficiary] will serve as our in-house technical support for our clients who subscribe to the business machines rental program.

Further, the I-129 letter of support specifically noted the following education requirements: "We believe that this position requires a bachelor's degree or its equivalent with the position."

Subsequent to the H-1B's approval, the petitioner filed the ETA 750 on behalf of the present beneficiary for the position of Mechanical Engineer. The ETA 750 was filed on February 1, 2002, listed a pay rate of \$21.39 per hour, and that the position would be full-time.

Further, the job description on the ETA 750 read as follows:

Assist in researching the latest development in digital copier, color copier, laser printer, laser fax, and other business machines; assist in maintenance and repairing of highly technical rental business machines; assist in designing and developing a test repair system/tool; and assist in providing technical demonstrations.

The ETA 750 position description listed was essentially very similar in job duties to the position description for the H-1B position of Mechanical Engineer. Since the ETA 750 position appears to be the same as the I-129 H-1B position, this would be expected. However, we note that the ETA 750 listed the following education requirement: Education: "not required." The position certified did not require any degree, and specifically did not require a Bachelor's degree in Engineering, or the equivalent thereof as listed in the H-1B petition.

On February 20, 2007, the AAO director issued an RFE and requested that the petitioner provide information related to both the petitioner's organization and the position, and to explain discrepancies within the record:

The Form I-140 filed indicates that you employed eight individuals, and Form I-129 listed five individuals. Please provide an organizational chart identifying your employees by name and position title, as well as the educational requirements for each position, and provide the quarterly wage reports filed for these employees from June 29, 2001 to the present. Additionally, provide W-2 statements from the year 2001 for each worker, and provide I-9 documentation for each worker presently employed.

Additionally, the RFE requested that the petitioner explain the differing educational requirements between the I-129 H-1B position, and the certified Form ETA 750, and to provide any evidence that would distinguish these positions from one another. Further, the RFE requested an explanation of the discrepancy in the prevailing wage for the same position in light of the different educational requirements. Additionally, the petitioner was requested to explain why the beneficiary, who previously worked on a part-time basis, will

now work on a full time basis, and to evidence that the petitioner had a legitimate full-time need for the beneficiary based on the petitioner's current staffing.⁸

In response to the RFE, the petitioner supplied information related to the petitioner's organization. The petitioner's organization has grown from five to eight employees to 18 or 19 employees, exhibited by the quarterly wage forms supplied. The petitioner supplied a business organizational chart, which shows that the beneficiary is employed in the "QC Department," which we presume to stand for "Quality Control." The chart exhibits that two other individuals are employed in the QC Department. We note that the RFE additionally requested that the petitioner indicate the educational requirements for each position. The petitioner has not done so.⁹ The petitioner did provide its 2005 and 2006 federal tax returns, as well as quarterly wage forms filed with the California Employment Development Division ("EDD") for the quarters ending March 31, 2002 through December 31, 2006. The petitioner additionally supplied Forms W-3 Transmittal of Wage and Tax Statements, and W-2 Forms for each employee, for the years 2002,¹⁰ 2004, 2005, and 2006.

Related to the questions regarding the position's requirements, the petitioner provides:

We required a minimum of a Bachelor's degree when we filed the H-1B. This is the actual minimum requirement for the H-1B position. When we filed the ETA 750, we only required a minimum of 2 years of experience. We did this to expand the applicant pool and give us a wider choice of applicants. The labor certification process requires a good faith search of all possible applicants and we felt that by considering such a broad range of applicants, we have complied with the Department of Labor's requirements. Please note that by doing so, we did not intend to favor the beneficiary.¹¹ In fact, this was to the beneficiary's disadvantage

⁸ We note that based on the petitioner's quarterly Forms 941 provided, that the petitioner's staffing has increased so that it would appear that the petitioner validly requires the beneficiary on a full-time basis. Further, the beneficiary's 2006 W-2 Form exhibits that the beneficiary is now paid a wage very close to the proffered wage.

⁹ The RFE additionally requested that the petitioner provide I-9 documentation for each worker presently employed. The petitioner did not provide this information.

¹⁰ The petitioner did not provide W-2 information for the year 2003. Presumably, this was an inadvertent error.

¹¹ We note that the beneficiary's wife has the same surname as one of the petitioner's three owners. We note that under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See also *Bulk Farms, Inc. v. Martin*, 963 F.2d 1286 (9th Cir. 1992), where the petitioner is owned by the person applying for position, it is not a *bona fide* offer (denied labor certification application for president, sole shareholder and chief cheese maker even where no person qualified for position applied). If there is a relationship and the petitioner failed to disclose this to DOL during the labor certification process, then the bona fides of the job offer may be in question.

On July 12, 2007, the AAO director issued a Notice of Adverse Information for the petitioner to address this issue. The petitioner stated that the beneficiary is the brother-in-law of one of the owners, Seung Gi Jang, but that

because if we found a qualified applicant, we would have been forced to withdraw the ETA 750 application or risk denial of the application.

The regulations related to the H-1B nonimmigrant category at 8 C.F.R. §§ 214.2(h)(4)(ii) provide that a specialty occupation:

Means an occupation which requires theoretical and practical application of a body of highly specialized and practical knowledge of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which required the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

For the position to qualify as an H-1B position, under 8 C.F.R. §§ 214.2(h)(4)(iii)(A) the position must meet one of the following criteria:

- (1) a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) the employer normally requires a degree or its equivalent for the position; or
- (4) the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The beneficiary must establish that he or she holds a U.S. baccalaureate degree or higher required by the specialty from an accredited college or university; holds a foreign degree equivalent to a U.S. baccalaureate or higher degree required by the specialty; holds an unrestricted state license, registration, or certification required by the specialty; or has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. 8 C.F.R. §§ 214.2(h)(4)(iii)(C).

The instructions on Form ETA 750 provide that the employer should list in item 14, the "minimum education, training, and experience required to perform the job duties." The petitioner in the instant case has not listed that any education is required for the position. The petitioner has advertised that the position does not require a degree. The petitioner contends that it sought to "widen the scope" and comply with DOL precepts to ensure that the opportunity is available to qualified U.S. workers. The ETA 750 itself states that the petitioner

owner has only a 33% interest in the company. Further, [REDACTED] provides that he is not involved in the hiring or supervision of the beneficiary, and that a different individual would have screened and interviewed candidates that responded to advertisements placed in relation to the labor certification process.

should list the minimum requirements. DOL lists that the petitioner should not “include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.” *See* Instructions for completing Form ETA 750, Part A. Offer of Employment, section 14.

If the position required a bachelor’s degree, the petitioner should have listed the degree on the ETA 750. If the petitioner were willing to advertise and hire a qualified candidate without a bachelor’s degree, then the position truly does not require one. The petitioner has failed to set forth any criteria to show that the “mechanical engineer” position as listed on the “I-129H” requires a degree, other than the assertion that they required a bachelor’s degree when the petitioner filed the H-1B as “this is the actual minimum requirement for the H-1B position.” However, the petitioner has not distinguished the H-1B position from the position as listed on the ETA 750. The petitioner has not provided information related to the educational backgrounds of the petitioner’s other similarly employed individuals in the Quality Control Department. The petitioner asserts that it did not make any misrepresentations or fraudulent representations. We will accept that the petitioner has acted in good faith.

We are satisfied that the position does not require a degree, and accordingly the Form I-140 will be approved. However, this leaves the beneficiary’s underlying H-1B status in question, which may be revoked.¹² The petitioner has overcome the issue related to its ability to pay, the reason for the petition’s initial denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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

¹² 8 C.F.R. § 214.2(h)(11)(B) provides that the director may revoke an H-1B petition at any time, even after the expiration of the petition.