

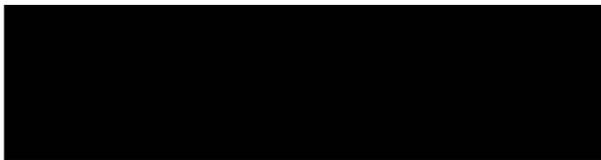


U.S. Citizenship  
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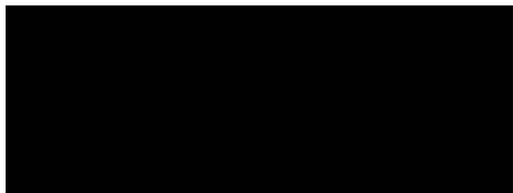
FILE: EAC 05 148 53104 Office: VERMONT SERVICE CENTER Date: JUN 23 2008

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 nonimmigrant visa petition was approved by the service center director. Based upon information obtained from the beneficiary during his visa issuance process at the U.S. Consulate, Chennai, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner is a software consulting business that seeks to employ the beneficiary as a programmer. 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 director determined that the petitioner had not responded to the NOIR and thus had not established that a specialty occupation is available for the beneficiary.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's approval notice; (3) the consular officer's recommendation for reconsideration and possible revocation of the petition; (4) the director's notice of intent to revoke; (5) the director's decision revoking the petition; and (6) the Form I-290B and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

In this matter, the director revoked the approval of the petition because the petitioner did not respond to the NOIR and thus had not established that a specialty occupation is available for the beneficiary. On appeal, counsel submits additional evidence including "a detailed rebuttal [dated June 7, 2007] made by the Petitioner in respect of the decision made by the Service." The record, however, contains no evidence that the petitioner's rebuttal was submitted timely for the director's consideration. Generally, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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 appeal is dismissed. The petition is revoked.