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FILE: EAC 06 174 50020 Office: VERMONT SERVICE CENTER Date: OCT 15 2008

IN RE: Petitioner:
Beneficiary:



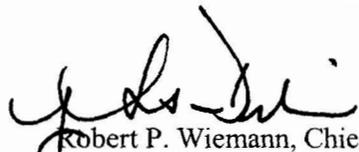
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 Vermont Service Center on September 1, 2006. A Notice of Intent to Revoke (NOIR) was thereafter issued on March 29, 2007. The director revoked the approval of the Form I-129 on July 2, 2007, noting that the petitioner did not respond to the NOIR and had not, therefore, overcome the grounds of revocation set forth in the NOIR. The matter is now before the Administrative Appeals Office (AAO) on appeal. On appeal, the petitioner provided proof that a response to the NOIR was received by the Vermont Service Center within the time permitted for response. The director's decision revoking approval of the petition for failing to respond to the NOIR is, accordingly, withdrawn and a new decision will be entered. The appeal will be dismissed. The petition will be revoked.

The petitioner is an adult day care center. It seeks to employ the beneficiary as a marketing manager, and endeavors to classify her 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 revoked the Form I-129 petition following receipt of a memorandum dated November 3, 2006, from the American Consulate's office in Minsk, Belarus. That memorandum noted that the petitioner had stated in a position description that the beneficiary was "proficient in English, Russian and Belarusian languages which are essential for the [p]etitioner's growth." The memorandum noted that the beneficiary was interviewed pursuant to approval of the Form I-129 petition, that the beneficiary was not conversant in the English language, and that as a result, she was not qualified to perform the duties of the proffered position. Based upon the consul's memorandum the director issued a NOIR, attaching the consular memorandum, and subsequently revoked the petition.

The record contains the petitioner's response to the director's NOIR. In that response, counsel for the petitioner states that she made an error in a support letter dated May 18, 2006, wherein she described the duties of the offered position. In that letter it was stated that the beneficiary would be required to:

- Develop the petitioner's marketing strategy in detail;
- Identify potential clients;
- Develop pricing strategies to help the petitioner to maximize its profits while ensuring that clients are satisfied;
- Monitor trends that indicate the need for new services;
- Work with advertising agencies to promote the petitioner's services and to attract potential clients.

The petitioner stated that a minimum of a bachelor's degree in finance, accounting or a related field was required to perform the duties of the proffered position.

Counsel further stated in the support letter that the beneficiary is ". . . well advanced in using computer technology and proficient in the English, Russian and Belarusian languages which are essential for the Petitioner's growth." Counsel states that this statement was in error and that the position does not require the beneficiary to speak the English language. In response to the NOIR, counsel submitted a letter from [REDACTED]

██████████ the owner of the petitioner, stating that he does not require knowledge of the English language to perform the duties of a marketing manager as most of his clients are elderly Russians and those individuals are his target market. Mr. ██████████ further notes that more than half of his staff are native Russian speakers. He states that the applicant would work with Russian radio stations and Russian TV channels in New Jersey and other Russian media outlets to market the services of his organization. The petitioner submitted sample marketing materials in the Russian language. It is also noted, however, that much of the advertising and media information submitted by the petitioner is promoted in the English language. It would not be possible for the beneficiary to perform the duties detailed by the petitioner without being fluent in the English language, as initially indicated in counsel's May 18, 2006 letter supporting the petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The director may only revoke the petition under one of five stated grounds listed in 8 C.F.R. § 214.2(h)(11)(B)(iii), after giving proper notice of intent to revoke (NOIR) the petition. In this instance the director gave notice of intent to revoke the Form I-129 petition. The petitioner responded to that notice as permitted by regulation, but that response is insufficient to overcome the basis of the director's NOIR. The record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation in the petitioner's business environment, and approval of the Form I-129 petition under the record of this proceeding would constitute gross error. Thus, the petition is properly revoked under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). As such, the director's revocation shall not be disturbed.

Beyond the decision of the director, the record does not establish that the proffered position qualifies as a specialty occupation. The duties detailed for the position are presented in general terms and it is not possible to determine from that generic description precisely what tasks the beneficiary would perform on a daily basis, or the complexity of those duties. The petitioner describes the offered position as that of a marketing manager. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied and include duties normally performed by advertising, marketing, promotions, public relations, and sales managers. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many marketing managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Because of

the general nature of the duties described of record, the AAO is unable to determine that the position meets any of the other eligibility criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As always, 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 failed to sustain that burden.

ORDER: The appeal is dismissed. The petition is revoked.