



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 25 2014

Office: CALIFORNIA SERVICE CENTER File: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

N.B.
for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The director initially approved the nonimmigrant visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR) the approval of the petition, and ultimately did revoke the approval of the petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision to revoke the approval of the petition is withdrawn. The matter will be remanded to the service center director for further consideration and action.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on September 9, 2009. The petitioner stated that it is a financial solutions and real estate services business, established in 2005, with five employees.¹ In order to employ the beneficiary in what it designates as a business analyst position, the petitioner seeks 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 initially approved the petition on September 21, 2009. Subsequent to the petition's approval, U.S. Citizenship and Immigration Services (USCIS) conducted a site visit at the petitioner's reported address. The director reviewed the information from the site visit report and issued a NOIR, which contained a statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal.

On September 6, 2012, counsel for the petitioner responded to the NOIR by submitting a brief and additional evidence. Upon review of the evidence, the director revoked the approval of the petition on January 16, 2013, finding that the beneficiary was no longer employed in the capacity specified in the petition. Thereafter, counsel for the petitioner submitted an appeal of the decision. In support of the appeal, counsel submits a brief and additional evidence.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's NOIR; (3) the petitioner's response to the NOIR; (4) the director's revocation notice; (5) the Form I-290B (Notice of Appeal) and supporting documentation; (6) the AAO's Notice of Derogatory Information (NDI) and Request for Evidence (RFE) (hereinafter, NDI/RFE); and (7) the petitioner's response to the AAO's NDI/RFE and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

USCIS may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part 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

¹ On the Form I-129, the petitioner stated that the five employees include independent contractors.

- (2) The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; 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.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

Accordingly, to comply with the notice requirements of 8 C.F.R. § 214.2(h)(11)(iii), a director's decision to revoke a previously approved petition must be preceded by a NOIR. The NOIR "shall contain a detailed statement of the grounds for the revocation." In the instant case, the director issued a NOIR stating that USCIS had obtained new information pursuant to a site visit on November 2, 2011. This information does not appear to correspond with the information contained in the site visit report.

The petitioner must be provided with notice of all of the grounds for the revocation and be offered an opportunity to submit additional evidence or arguments for consideration. The notice must be in accordance with 8 C.F.R. § 214.2(h)(11)(iii) and include a detailed statement that clearly articulates the grounds for the revocation.

In the instant case, to properly analyze the grounds for revocation (as well as any other issues that are material to the case), the petition will be remanded to the director for review and to contemplate the issuance of a new NOIR in accordance with the applicable statutory and regulatory provisions.

ORDER: The director's decision to revoke the approval of the petition is withdrawn. The matter is remanded for further action in accordance with the foregoing and entry of a new decision.