



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 18 2014 OFFICE: VERMONT SERVICE CENTER

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 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center ("the director"), revoked the previously approved nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it is a "Development/marketing of Internet Customer Service software" business, established in 1997 with 97 employees in the United States. It seeks to employ 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 February 28, 2011. On February 13, 2013, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition, based on derogatory information received from the U.S. Consulate in New Delhi, India. The NOIR advised the petitioner that the U.S. Consulate had questions regarding the petitioner's employer-employee relationship with the beneficiary. In a response dated March 8, 2013, the petitioner provided a response to the NOIR, including a detailed declaration from the petitioner and an organization chart. The director revoked approval indicating that the organizational chart submitted was insufficient to overcome the concerns raised by the U.S. Consulate. On appeal, counsel for the petitioner re-submits the detailed declaration provided by the petitioner as well as additional evidence establishing the employer-employee relationship between the petitioner and the beneficiary.¹ Counsel asserts that the totality of the evidence submitted establishes the employer-employee relationship by a preponderance of the evidence and that revocation of the approval was erroneous.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the approval notice; (5) the director's NOIR; (6) the petitioner's response to the NOIR; (7) the revocation decision; and (5) the Form I-290B, Notice of Appeal or Motion, with counsel's brief and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

Upon review, the petitioner has overcome the director's sole ground for revoking approval of the instant petition. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The totality of the evidence presented in this record of proceeding establishes that the petitioner and the beneficiary have an employer-employee relationship. Further, the petitioner has established that the proffered position qualifies for classification as a specialty occupation as that term is defined by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii) that the beneficiary is qualified to perform the duties of the proffered position.

¹ We observe, that the petitioner in this matter filed an amended petition () on behalf of the beneficiary on April 27, 2012, which was approved on May 11, 2012; and a petition requesting continuation of the beneficiary's H-1B classification () on September 30, 2013, which was approved on October 3, 2013).

The burden of proof in visa petition 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 director's May 9, 2013 decision is withdrawn, and the petition is approved.