



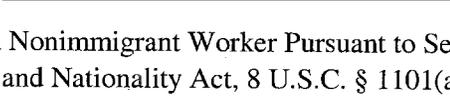
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FILE: WAC 03 143 52750 Office: CALIFORNIA SERVICE CENTER Date: **JUL 05 2005**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director initially approved the nonimmigrant visa petition. Based upon information obtained during the beneficiary's nonimmigrant visa interview at the U.S. consulate in Manila, the director determined that the beneficiary was not eligible for the benefit sought. The director, therefore, properly served the petitioner with a notice of his intent to revoke the approval of the petition. The director ultimately revoked the approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a textile finishing and printing company that seeks to employ the beneficiary as a systems analyst. The petitioner 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).

On July 1, 2004, the director issued a notice of intent to revoke the approval based on information from the United States Consulate in Manila indicating that at her initial interview, the beneficiary did not provide certified transcripts from her university and her degree could not be verified with the school. The beneficiary had two subsequent interviews, during which she stated that she was unsure as to her responsibilities as a systems analyst and she was unable to answer any questions regarding the position description in the petition. In addition, she was unable to speak on the specifics of her professional expertise. The Consulate and Citizenship and Immigration Services (CIS), in its Notice of Intent to Revoke, found that the beneficiary was not eligible to perform the duties of the proffered position. The petitioner was given 30 days to submit evidence in support of the petition and in opposition to the revocation. On August 2, 2004, the petitioner responded to the notice.

In response to the director's notice of intent to revoke, counsel stated that the Notice of Intent to Revoke was deficient because the regulations require that CIS provide the entire overseas report in order for the petitioner to rebut. Counsel provided a statement from the beneficiary indicating that at her second consular interview, she provided certified transcripts, her diploma and certification of graduation in a sealed envelope. Counsel stated that he was not able to obtain a certified copy of the beneficiary's transcript within the 30-day reply period to the Notice of Intent to Revoke. Counsel asserts that there is no requirement that a beneficiary possess any particular level of experience to be eligible for an H-1B visa.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's notice of intent to revoke approval of the petition; (3) the petitioner's response to the notice of intent to revoke; (4) the director's decision revoking approval of the petition; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a systems analyst. According to the letter of support submitted with the petition, the beneficiary would perform duties that entail: studying the petitioner's Enterprise Resource Planning (ERP) systems and modules and improving their functionality and cross-reference abilities; analyzing the petitioner's requirements and information processing procedures to determine which activities would be automated; identifying relevant data input forms and sources and the most efficient way to summarize them; identifying the petitioner's information processing needs and systems

capabilities; developing information systems that operate within capabilities and presenting the information in useable formats; and maintaining computer systems and correcting errors as they occur.

The director determined that the petitioner did not establish that the beneficiary was qualified to perform the above-described duties. On appeal, counsel submits a certified copy of the beneficiary's transcript, her original diploma, and a letter certified from the registrar of the beneficiary's college stating that the beneficiary had graduated with a bachelor's degree in business administration with a major in computer science.

On appeal, counsel asserts, "The regulation requires the overseas report **in its entirety** be provided to the petitioner so that it has an adequate opportunity to rebut the allegations. A summary of the report is inadequate." [Emphasis in the original]. The AAO disagrees. The regulation at 8 C.F.R. § 103.2(b)(16)(i) states:

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered.

There is no requirement in the regulations that the entire document that contains derogatory information be produced; the only requirement is that the information be provided, as the director correctly did.

Under CIS regulations, the approval of an H nonimmigrant worker petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(h)(11)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(h)(11)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Referring to the eligibility criteria at 8 C.F.R. § 214.2(h)(4)(iii), the director reviewed the rebuttal evidence and concluded that the beneficiary could not perform the duties of the position. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(h)(11)(iii)(A)(5): "Approval of the petition violated paragraph (h)" of 8 C.F.R. § 214.2, in that the beneficiary could not immediately begin performing the duties of the position upon her arrival in the United States. The AAO does not concur with the director's findings, however.

Counsel has provided certified copies of the beneficiary's educational documents, which establish that she has a degree required by the specialty occupation.

The director also found that the petitioner had not resolved the inconsistencies raised by the consular officer. None of the "inconsistencies" raised were relevant to the adjudication, beyond the beneficiary's academic background. As counsel correctly notes, there is no requirement that the beneficiary possess any experience in order to qualify for the proffered position. The AAO notes that the beneficiary had been out of college for

one year when the consular officer interviewed her, and she apparently had not been working in her field, so her inability to discuss her professional expertise is not unexpected.

Since the beneficiary is qualified to perform the duties of the proffered position, the director improperly revoked approval of the petition.

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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.