

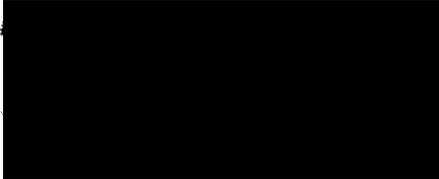
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 02 007 53093 Office: VERMONT SERVICE CENTER Date: JAN 13 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

SELF-REPRESENTED

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 nonimmigrant visa petition was approved by the Vermont Service Center on October 11, 2001. On May 29, 2003, a Notice of Intent to Revoke (NOIR) was served on the petitioner, by regular U.S. mail, through the petitioner's counsel. That notice set forth the grounds for revocation of the petitioner's Form I-129 petition, and informed the petitioner that it had 30 days in which to respond to the NOIR. The petitioner did not respond to the NOIR, and the petition was ultimately revoked on December 1, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition is revoked.

The petitioner is a producer of advanced machine vision and NIR spectroscopy systems that seeks to employ the beneficiary as a spectroscopist and 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 approved the petition and forwarded it to the U.S. Embassy in Moscow. Based on an interview with the beneficiary, a consular officer returned the petition to the director along with a memorandum recommending revocation of its approval. The director then initiated revocation proceedings.

The director's notice of intent to revoke (NOIR) the Form I-129 petition was based on the beneficiary's qualifications to perform the duties of the proposed position following receipt of a memorandum dated February 8, 2002, from the U.S. Embassy in Moscow. The memorandum stated that the beneficiary was not qualified to perform the duties of the proposed spectroscopist position. The director granted the petitioner thirty days to submit evidence to overcome the reasons for revocation. The petitioner neither responded to the notice nor submitted evidence to overcome the intent to revoke. The director then issued a decision to revoke the petition on December 1, 2003. On appeal, the petitioner asserts that the beneficiary is qualified for the proposed position and submits additional evidence.

The record reflects that the NOIR was mailed to the petitioner's counsel at its address of record. On appeal, the petitioner maintains that the beneficiary is qualified to perform the duties of a spectroscopist but does not explain why it did not respond to the NOIR. The petitioner submits additional evidence relating to the beneficiary's qualifications, including a translation of the beneficiary's Russian nursing certificate without the original certificate, the beneficiary's TOEFL Exam score, a document in Japanese without translation, and a photograph of the beneficiary at a spectroscopy expo in Tokyo.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation, including a credentials evaluation, a copy of the beneficiary's diploma, the beneficiary's resume, and an employment verification letter from the beneficiary's employer in Russia; (2) the U.S. Embassy's memorandum; (3) the director's NOIR; (4) the director's revocation letter; and (5) Form I-290B with additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

Section 8 of the Code of Federal Regulations (8 C.F.R.) states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on

appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's NOIR. *Id.* 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.

Additionally, the petitioner did not establish that the beneficiary qualifies to perform the duties of a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States bachelor's or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a bachelor's or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this case, approval of the petition violated paragraph (h) of the cited regulation, in that the beneficiary did not qualify to perform the duties of a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C). Approval of the petition constituted gross error, as the record does not establish that the petitioner is qualified, by education or experience equivalent to a bachelor's degree in a specific specialty, to perform the duties of a specialty occupation.

The record contains an evaluation by [REDACTED] a credentials evaluator. Mr. [REDACTED] found that the beneficiary's university studies in Russia were the equivalent of 3 years of university study in the United States and that her years of work experience, along with her studies, amounted to the equivalent of a U.S. bachelor's degree in medical science. The record does not establish that Mr. [REDACTED] meets the regulatory requirement for issuing an experiential evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). There is no documentation that indicates that Mr. [REDACTED] has the authority to grant college level credit for training and/or experience in the specialty. A credentials evaluation service may evaluate credentials only, not work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As such, the evaluation is of little evidentiary value and does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. Further, the record is insufficient for CIS to establish that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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 and the appeal shall accordingly be dismissed.

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