



U.S. Citizenship  
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Services

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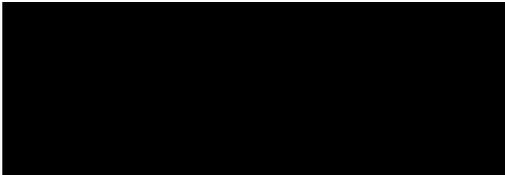
FILE: WAC 02 272 54056 Office: CALIFORNIA SERVICE CENTER Date: JAN 20 2006

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 nonimmigrant visa petition was approved by the California Service Center on April 3, 2003. A Notice of Intent to Revoke (NOIR) was thereafter served on the petitioner. The director then revoked approval of the Form I-129 petition on July 1, 2004. 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 involved in the sales and rental of medical/health equipment and supplies. It seeks to employ the beneficiary as a systems analyst, and endeavors to classify him 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 after determining that the petitioner failed to pay the beneficiary the full wage he was entitled to as stated in the Form I-129 petition and Labor Condition Application (LCA) filed in conjunction with the petition. The initiating petition states that the beneficiary would be employed on a full time basis and paid an annual salary of \$47,885. The record establishes, however, that the beneficiary was paid a salary of \$23,040 in the year 2002, and \$25,505.20 in 2003. As a result of these findings, the director issued a notice of intent to revoke (NOIR) on the grounds that the petitioner violated the terms and conditions of the approved petition.

The petitioner responded to the NOIR stating, in part, that the reduction in wages resulted from an unanticipated reduction in business. The petitioner further asserts that the reduction in hours worked by the beneficiary is not a material change in the terms and conditions of the beneficiary's employment which affects eligibility for H-1B status, thereby requiring the petitioner to notify Citizenship and Immigration Services (CIS) of the change and to file a new petition reflecting the changes. The sole issue to be determined in these proceedings is whether the reduction in hours worked by the beneficiary represents a material change in the terms and conditions of the beneficiary's employment requiring the petitioner to notify CIS of those changes pursuant to 8 C.F.R. § 214.2(h)(i)(II)(A).

8 C.F.R. § 214.2(h)(i)(II)(A) states in part that a petitioner shall immediately notify CIS of any changes in the terms and conditions of employment of a beneficiary which may affect the beneficiary's eligibility under Section 101(a)(15)(H) of the Act. Pursuant to 8 C.F.R. § 214.2(h)(2)(i)(E), a petitioner must file an amended petition to reflect any material change in the terms and conditions of an alien's employment. A material change is a change that directly impacts the alien's continued eligibility for H-1B classification. In this instance, the beneficiary continues to perform the same duties that he was originally approved to perform when the petition was filed. The only change that occurred was a reduction in the hours that he was permitted to work due to a downturn in business. The petitioner could have originally petitioned for the beneficiary to perform identical duties on a part-time basis, and the petition would have been approvable under identical circumstances. The fact that the beneficiary's hours were reduced does not impact his eligibility for H-1B classification. As such, no material change in the terms and conditions of employment occurred which necessitated notice to CIS or the filing of a new petition. The director's revocation must accordingly be overturned, and the petition approved.

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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 sustained that burden.

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