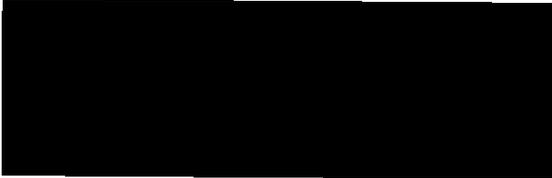




U.S. Citizenship
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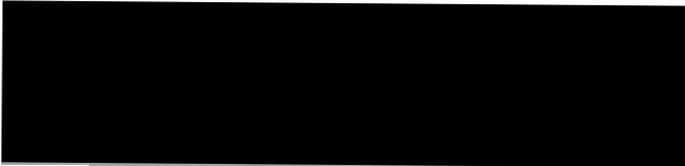
Date: JUN 01 2006

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
Robert P. Wiemann, 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), and ultimately did revoke, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will be revoked.

The petitioner is a financial planning firm that seeks to employ the beneficiary as a systems analyst. The petitioner, therefore, 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).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, filed on August 5, 2003; (2) the director's approval of the petition, dated August 15, 2003; (3) the director's June 21, 2004 notice of intent to revoke the petition (NOIR); (4) the petitioner's July 12, 2004 response to the NOIR; (5) the director's November 24, 2004 revocation; and (6) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

After obtaining the H-1B approval notice, the beneficiary appeared at the United States consulate in Mumbai, India to obtain the visa. The interviewing officer denied the visa and returned the petition to the service center. The interviewing officer had concerns regarding the legitimacy of the petitioner and whether the beneficiary was related to the petitioner. The interviewing officer also noted that the beneficiary had been granted an H-1B approval in November 2001. The consulate denied the visa, however, as the beneficiary was unable to correctly answer any questions about computers or computer programming. Finally, the interviewing officer noted that the letters from the beneficiary's two most recent employers were not on original letterhead and used identical language, stating that "[o]fficers had concerns about the veracity of these documents."

The interviewing officer relayed these concerns to the service center, and the director, finding that these issues constituted good and sufficient cause, issued the NOIR on June 21, 2004.

The director's NOIR included a memorandum from the consulate relaying the interviewing officer's concerns and provided the petitioner 30 days during which to address these concerns. Counsel's July 12, 2004 response included evidence establishing the petitioner's legitimacy and an explanation of the beneficiary's relationship to one of the partners in the company. Regarding the beneficiary's inability to answer any questions about computers and computer programming in 2001 and the veracity of the two letters in question, counsel stated the following:

Again, we are not sure of the questions that were asked to [the beneficiary] in November 2001 but as you can see from the petition that was approved [the beneficiary] clearly had and has the qualifications required for the position. The position is for a Systems Analyst. By a photocopy of [the beneficiary's] resume and the equivalency evaluation submitted with the petition it is clear that [the beneficiary] is a Systems Analyst and qualifies for this and other computer related positions.

Once again it is difficult to understand why the Consular Section in Mumbai declined to consider this documentation and to grant [the beneficiary] a visa. However, the reasons that they gave in their memo are incorrect and inaccurate. . . .

The director revoked the petition's approval on November 24, 2004, stating the following:

The letter on June 21, 2004 [the NOIR] stated that the American Consulate at Mumbai had stated that they had some concerns regarding the beneficiary's qualifications for the position being offered, as well as the legitimacy of the petitioner.

Your response did not address the beneficiary's qualifications for the position being offered.

Therefore, the approval of your petition is revoked.

On appeal, counsel asserts that this statement was incorrect. Counsel notes that he submitted several items that had been submitted when the petition was initially filed: the beneficiary's resume, a credentials evaluation, evidence that the beneficiary obtained a degree in engineering, copies of transcripts, and a copy of his master's degree. Accordingly, counsel asserts, the beneficiary's qualifications were in fact addressed, and the director erred in denying the petition on this ground: "[f]or these reasons it is respectfully submitted that the petition should be reaffirmed and returned to Mumbai for issuance of the beneficiary's visa since the point on which the decision rests was approved by the Service initially and directly addressed [in the NOIR response]."

The AAO does not agree. Upon review, the petitioner has failed to overcome the director's revocation.

The AAO finds that counsel and the petitioner have overcome the concerns of the interviewing officer regarding the petitioner's legitimacy. However, in the portion of his NOIR response addressing the consulate's concerns regarding the beneficiary's qualifications, counsel resubmitted evidence and arguments already contained in the record. These items were all in the possession of the interviewing officer at the time of the visa interview; no new items were submitted in this regard.

Counsel's response made no attempt to explain why the beneficiary was unable to correctly answer any questions regarding computers and computer programming at his November 2001 visa interview, or to even address the issue. The statement in the NOIR response that "we are not sure of the questions that were asked" at that time or on appeal that "it is difficult to understand the Consul's behavior in Mumbai" do not address this issue, and do not overcome the concerns of the interviewing officer at the consulate. No evidence, such as affidavits or other primary evidence directly from the beneficiary has been provided. As the record contains no evidence to address, or overcome, these concerns, the AAO will not reverse the director's revocation on this ground.

Nor has counsel made any attempt to overcome, or address, the interviewing officer's concerns regarding the veracity of the work experience letters. No evidence, such as testimony from the beneficiary, the beneficiary's former employers, or other documentary evidence, is provided to contest the consular official's statements. Rather, the issue was ignored entirely. For this additional reason, the AAO will not reverse the director's revocation.

These issues – the beneficiary's reported inability to correctly answer any computer or computer programming questions in a previous interview and concerns regarding the veracity of work experience letters – relate directly to the issue of the beneficiary's qualifications to perform the duties of the proposed position. The director afforded the petitioner 30 days to address these concerns, but counsel failed to do

so. Rather, he resubmitted copies of documents already contained in the record of proceeding – documents that were before the interviewing officer at the time of the visa interview. Simply resubmitting these documents and asserting that they overcome the interviewing officer’s specific concerns does not meet the petitioner’s burden of proof in this matter.

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 instance, approval of the petition was in violation of paragraph (h) of the cited regulation because the beneficiary is not qualified to perform the services of the specialty occupation.

No evidence has been offered to overcome the grounds for revocation, and the AAO will not withdraw the director’s decision.

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 not sustained that burden.

ORDER: The appeal is dismissed. The approval of the petition is revoked.