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U.S. Department of Homeland Security  
U.S. Citizenship & Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



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JUL 10 2009

FILE: SRC 05 200 52103 Office: TEXAS SERVICE CENTER Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, 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 Bogota, 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 an educational institution teaching pre-school, elementary and middle school students that seeks to employ the beneficiary as a graphic designer. 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). After issuing a notice of intent to revoke the petition and considering the petitioner's response thereto, the director revoked the petition's approval on June 20, 2006.

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 graphic designer. According to a letter of support dated June 30, 2005, the beneficiary would perform the following duties:

- Design Art and copy layout for the company's website;
- Prepare brochures and Glossary Illustrations for information materials on the different schools;
- Approve all graphics for advertising and marketing of the schools;
- Confer with teachers to prepare illustrations for teaching materials and illustrations;
- Design art and copy layouts for material to be presented to parents, students and teacher[s];
- Study illustrations and photographs to plan presentation for the purchase of new schools;
- Review final layouts and suggest improvements needed;
- Creation and editing all advertisements, as well as negotiating contracts with Public Relations firms, advertisement firms and printing agencies.

On March 16, 2006, the director issued a notice of intent to revoke the approval based on information from the United States Consulate in Bogota indicating that during the beneficiary's interviews on September 6, 2005 and September 20, 2005, the beneficiary stated that he would perform duties in the proffered position that differed substantially from those claimed in the petition. The Consulate and U.S. Citizenship and Immigration Services (USCIS), in its Notice of Intent to Revoke, found that based on these statements, the beneficiary was not eligible for the benefit sought. The petitioner was given 30 days to submit evidence in support of the petition and in opposition to the revocation. On April 13, 2006, the petitioner responded to the notice.

The director found the petitioner's response insufficient, and subsequently revoked the approval of the petition on June 20, 2006. On appeal, counsel submits additional evidence in support of the beneficiary's eligibility.

Pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A), a director shall issue a notice of intent to revoke an approved Form I-129 petition if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition was not true and correct; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

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 statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. In the notice of intent to revoke, the director cited the consulate memorandum, which stated:

[The beneficiary] appeared at the Embassy for a personal interview on two occasions, on September 6 and 20, 2005. During the course of his two interviews, [the beneficiary] explained that he would be working in a marketing and sales capacity, using a shared cultural background with the parents of prospective students to sell his employer's services, as well as designing internet promotional material. These activities, as explained by [the beneficiary], go far beyond the responsibilities presented to DHS on his petition, which indicated [the beneficiary] would act as a graphic designer and "design and create graphics for the company's websites, learning and promotional (SIC)."

In a response dated April 13, 2006, counsel for the petitioner addressed the director's basis for revocation. Counsel indicated that the beneficiary at no time indicated to the consulate officer that he would be performing sales and marketing duties, and that the consulate's statement to that effect was erroneous. In support of this contention, counsel submitted a letter from the petitioner outlining the duties of the proposed

position as well as a signed statement from the beneficiary recounting the statements he provided during his consular interviews.

In the notice of revocation, the director stated that “nothing was submitted that could counteract the information developed by the Consular General in Bogota” and stated that “the bonafides of the United States entity and the qualifications of the Beneficiary for the benefit sought should have been established at the time of petition submission.” The director further found that “no new evidence was submitted” to overcome the deficiencies noted in the notice of intent to revoke.

Upon review, the AAO does not concur with the director’s findings. First, the director disregarded the signed statement of the beneficiary, submitted both in response to the notice of intent to revoke and again on appeal, which outlines the questions and answers provided during the consular interviews. The beneficiary indicates that in response to the question of what type of work he would be performing, he stated “Graphic Design, advertising, marketing and design and management of the web page.” Further a review of the beneficiary’s academic credentials indicates that he is qualified to perform the duties of a graphic designer by virtue of his possession of the equivalent of a bachelor’s degree in graphic design.

The memorandum of the consulate, upon which the revocation is based, simply states that “the beneficiary explained that he would be working in a marketing and sales capacity.” The consular officer provides no additional information, such as a written record of the questions asked and answers provided during the interview process, or a signed statement provided by the beneficiary claiming that he would perform sales and marketing duties.

On appeal, counsel asserts that the basis for the revocation is simply a misunderstanding, noting that the beneficiary’s duties as a graphic designer include preparing promotional material for advertising and marketing purposes. Based on the description of duties provided in the initial petition as well as the beneficiary’s signed statement and academic credentials, the AAO finds that the petitioner has provided sufficient evidence to satisfactorily overcome the basis for the director’s revocation.

The director relies wholly on one sentence in the consular memorandum which claims that the beneficiary stated he would be engaged in sales and marketing. No evidence regarding the context in which this statement was made is provided, nor did the director acknowledge the beneficiary’s signed statement outlining the interview process and the answers provided therein. Most importantly, however, the director did cite to any subsection of 8 C.F.R. § 214.2(h)(11)(iii)(A), and merely revoked the petition based on his conclusion that “the approval of a visa petition vests no rights in the Beneficiary of a petition.” When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

Denial of this petition cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unsupported assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

This petition may not be denied based on inferences or conclusions that are not supported by the record. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

Since the duties of the proffered position are akin to those originally claimed in the petition, and 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.