

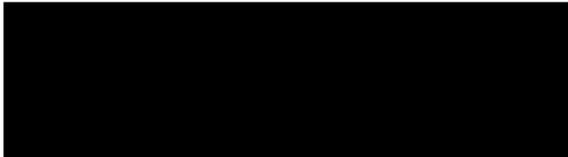
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:  Office: VERMONT SERVICE CENTER Date: DEC 29 2010

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the service center director. Based upon further review, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the record remanded for the entry of a new decision based upon all the evidence on the record.

The petitioner is seeking classification of the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). Based on information provided from the American Consulate in Chennai, the director found that the petitioner was unable to provide qualifying employment. A notice of the director's intent to revoke the petition was issued on April 15, 2009, which afforded the petitioner 30 days to submit evidence to overcome the basis for revocation. The director revoked the petition's approval on June 26, 2009, citing the petitioner's failure to respond to the NOIR.

On appeal, counsel for the petitioner contends that it filed a timely response to the notice which addressed the deficiencies in the evidence. Specifically, counsel indicates that a letter dated May 13, 2009 and supporting documentation was mailed to the Vermont Service Center via the United States Postal Service's (USPS) Express Mail, and was received by the service on May 15, 2009. Counsel submits a copy of USPS's manifest along with the confirmation of delivery, indicating that "D. Renaud" signed for the delivery at 12:08 p.m. on May 15, 2009.

Upon review of counsel's assertions and the documentation submitted on appeal, the petitioner timely responded to the director's NOIR. Consequently, the record will be remanded to the director to enter a new decision taking into consideration the evidence submitted in response to the NOIR.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision dated June 26, 2009 revoking the petition's approval is withdrawn and the record remanded for the entry of a new decision.