

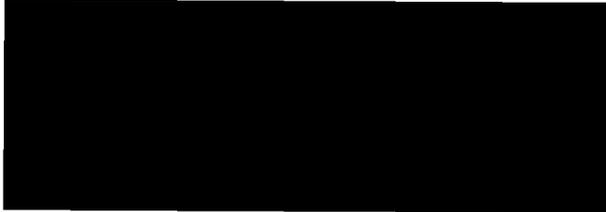
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



D2

Date: **JUL 25 2011** Office: VERMONT SERVICE CENTER FILE:

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:

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,

for Michael T. Kelly
Perry Rhew
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 summarily dismissed.

The petitioner designs, engineers and installs metal products, and seeks to employ the beneficiary as an industrial engineering manager. 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 director approved the petition on August 21, 2009.

An Administrative Site Visit was conducted on September 19, 2009 to determine whether the petitioner was lawfully employing the beneficiary in an H-1B specialty occupation position as an industrial engineering manager. The site visit demonstrated that the beneficiary was not being paid the prevailing wage, and thus the petitioner's employment of the beneficiary was not in accordance with the terms and conditions of employment. Consequently, the director issued the NOIR on January 6, 2010, which afforded the petitioner an opportunity to provide evidence to overcome the stated ground for revocation.

After reviewing the petitioner's response to the NOIR and finding the evidence submitted insufficient to refute the findings in the NOIR, the director revoked the petition's approval on November 29, 2010.

Counsel for the petitioner submitted a timely Form I-290B on December 30, 2010 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is considered complete as currently constituted.

The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the revocation. Counsel's statement on Form I-290B does not specifically identify any errors on the part of the director and is therefore insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner. Specifically, counsel stated:

The duties being performed remain those as essentially detailed on the H-1B petition.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). The petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. Moreover, counsel's brief statement in the Form I-290B does not address the basis for revocation in this matter, which was a finding that the petitioner was not paying the beneficiary the prevailing wage in accordance with the terms and conditions of the petition.

As neither counsel nor the petitioner presents additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding 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 summarily dismissed. Approval of the petition is revoked.