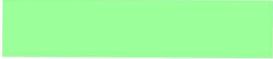


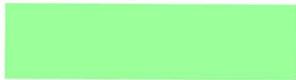


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 01 2013** 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)

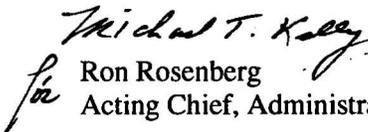
ON BEHALF OF PETITIONER:



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.

Thank you,


for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision to revoke approval of the petition will be withdrawn and the petition will be remanded for the director to again initiate and adjudicate the revocation-on-notice proceedings, in compliance with the provisions at 8 C.F.R. § 214.2(h)(11)(iii)(B), by issuing a new notice of intent to revoke the approval of the petition (NOIR); by considering whatever rebuttal evidence that the petitioner timely submits in response to the grounds specified in the NOIR; and by then issuing a new decision, based upon consideration of all evidence relevant to the grounds for revocation specified in the NOIR.

On the Form I-129 visa petition, the petitioner describes itself as a turbomachinery solutions company established in 2001. In order to employ the beneficiary in what it designates as a Gas Turbine Field Overhaul Manager position, the petitioner seeks 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 approval of the petition on the basis of his determination that the petitioner had failed to demonstrate that the petitioner was employing the beneficiary in accordance with the terms and conditions of the approved petition.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's notice of intent to revoke approval (NOIR) of the petition; (3) the director's decision revoking approval of the petition; and (4) the Form I-290B and counsel's supporting letter.

The petitioner filed the instant petition on October 20, 2009, and the director approved it on October 29, 2009, with dates of validity from October 31, 2009 through October 30, 2012. The record of proceeding contains a copy of a NOIR bearing the date September 19, 2011. On January 3, 2012, after receiving no response to the NOIR, the director issued the decision revoking the approval of the petition, which is the subject of this appeal.¹

On appeal, counsel claims that neither she nor the petitioner received the NOIR and that, therefore, they neither know the specific grounds upon which the revocation decision was based nor can submit an argument or evidence refuting the director's decision. In her January 30, 2012 letter submitted on appeal, counsel explains that she learned of the NOIR via an update to the U.S. Citizenship and Immigration Services website; and in that letter counsel also details her unsuccessful attempts to obtain a copy of the NOIR from U.S. Citizenship and Immigration Services.

The AAO finds that counsel has presented a persuasive account of her attempts to obtain a copy of the NOIR on behalf of the petitioner. The AAO is persuaded that neither she nor the petitioner

¹ It is noted that, subsequent to revoking the approval of this petition, the director approved another petition filed by this petitioner on behalf this beneficiary. See [REDACTED], filed October 5, 2012 and approved October 12, 2012, with dates of validity from October 12, 2012 through October 12, 2015.

received a copy of the NOIR and, consequently, that the petitioner did not have the opportunity to review the NOIR and to submit evidence in rebuttal as provided by the regulatory provisions at 8 C.F.R. § 214.2(h)(11)(iii)(B). It is for these reasons that, *one*, the director's January 3, 2012 decision revoking approval of this petition will be withdrawn and that, *two*, the matter will be remanded to the director for issuance of a new NOIR, for adjudication of the revocation-on-notice proceeding in accordance with the provisions at 8 C.F.R. § 214.2(h)(11)(iii)(B), and for the issue of a new decision, all in compliance with the notice and decision requirements set forth in that regulation. For easy reference, that regulation is fully quoted below:²

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's January 3, 2012 decision is withdrawn. The matter is remanded to the director for further action consistent with the above decision.

² If the director determines that the petitioner's response is not sufficient to overcome the grounds of the NOIR, he should consider initiating revocation-on-notice proceedings with respect to the subsequent H-1B petition he approved on behalf of the petitioner [REDACTED], as the AAO presumes the issues raised in the NOIR would be pertinent to that petition as well.