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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 0 5 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "director") initially approved the nonimmigrant visa petition. In response to new evidence and upon review of the record, the director issued a notice of intent to revoke (NOIR), and ultimately did revoke the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision of revocation will be withdrawn. The petition will be remanded to the director for further proceedings consistent with this decision.

The petition was filed at the California Service Center on May 19, 2011, seeking to classify the beneficiary as an H-1B temporary 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) in order to employ him in what the petitioner designates as an operations and systems analyst position. The petitioner described itself as a home health agency with 12 employees.

The director approved the visa petition on June 11, 2012. However, on March 8, 2013 the service center director issued an NOIR in this matter. Specifically, the NOIR issued in this matter states:

> During the visa interview, the beneficiary indicated that he is required to have a nursing degree and will be assisting patients in addition to the computer duties. He cannot practice as a full nurse yet because he has not passed the NCLEX. However, he is planning to do so soon. Post determines that the beneficiary will not work in the designated position of Operations and Systems Analyst but rather intends to work as a nurse.

The director also stated, based, at least in part, on the beneficiary's alleged admissions, that the beneficiary would work as a nurse, that the proffered position had not been shown to be a specialty occupation position, and that the Labor Condition Application (LCA) submitted with the visa petition had not been shown to correspond with the visa petition in that it had not been shown to be valid for the position in which the beneficiary would be employed.

The petitioner's response was received on April 9, 2013. In a letter dated April 4, 2013, the petitioner's president stated that the beneficiary would not work as a nurse. In a statement dated April 8, 2013, the beneficiary stated:

> I would like to reiterate that:
> a. I NEVER indicated that I was required to have a nursing degree to carry out my tasks as an Operations and Systems Analyst;
> b. I NEVER indicated that I would be assisting patients in addition to my computer duties;
> c. I NEVER indicated any plans to take the NCLEX;
> d. I MADE VERY CLEAR THAT I WAS AWARE OF MY DUTIES AS AN OPERATIONS AND SYSTEMS ANALYST and NOT as a nurse (because I did not possess the requisite license.

On June 13, 2013, the director revoked approval of the visa petition. The revocation was substantially based on answers the beneficiary allegedly gave at a consular interview. The director revoked the approval of the petition based on her findings that (1) the proffered position is not a specialty occupation position, (2) the visa petition is not supported by a valid LCA, and (3) the statement of facts in the visa petition was not true and correct. As to the finding that the proffered position has not been shown to be a specialty occupation position, the director also stated:

> Even if the beneficiary will perform the duties of Operations and Systems Analyst [rather than nursing duties] as the petitioner claims, the proffered position is also not qualified as a specialty occupation. The petitioner has declared with the Department of Labor that the proffered position of Operations and Systems Analyst falls under the occupational title of "Computer Systems Analysts." Most computer systems analysts have a bachelor's degree in a computer-related field. Some employers prefer applicants who have a Master of Business Administration. Although many analysts have technical degrees, such a degree is not always a requirement. Many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere. Some analysts have an associate's degree and experience in a related occupation. As a result, the proffered position cannot be considered to have met this criterion.

The petitioner filed a timely appeal on July 19, 2013. On appeal, counsel contends that the beneficiary made clear at his consular interview that he would not be working as a nurse and that the evidence of record shows the proffered position to be a specialty occupation position. Counsel did not directly address the assertion that the visa petition is not supported by a corresponding LCA.

USCIS may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

> (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part 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, inaccurate, fraudulent, or misrepresented a material fact; 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.

(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.

The AAO has reviewed a transcript of the beneficiary's consular interview, and notes that the beneficiary did not indicate that he is required to have a nursing degree for the proffered position, did not state that he will be assisting with patients in addition to his computer duties, and did not indicate that he plans to take the NCLEX.

Therefore, the AAO agrees with the petitioner that the director mistakenly determined that the beneficiary would not work in the position described in the visa petition, but would work as a nurse. The director also mistakenly concluded that the petitioner has not shown that the LCA submitted in support of the instant visa petition corresponds to that petition. Thus, the decision of revocation appears to be based on a misreading of the transcript of the beneficiary's consular interview. The director's decision revoking the approval of the petition must, therefore, be withdrawn.

Furthermore, while the AAO agrees with the director's ultimate conclusion that the proffered position does not qualify for classification as a specialty occupation, the director did not give proper notice in the NOIR of her finding that "[e]ven if the beneficiary will perform the duties of [an] Operations and Systems Analyst as the petitioner claims, the proffered position is also not qualified as a specialty occupation." The director's decision revoking the approval of the petition on this additional basis must, therefore, be withdrawn.

It is noted that although the record contains letters from counsel and the petitioner's president, those letters do not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or, if it does, identify that specific specialty. Further, reference to the duties attributed to the proffered position reveals no reason to find that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Further still, the LCA submitted with the visa petition indicates that the proffered position is a Level I (entry-level) computer systems analyst position. The record does not appear to contain sufficient evidence that such a position would require a minimum of a bachelor's degree in a specific specialty or its

equivalent. The visa petition appears, therefore, to have been approved as a result of gross error, and to be revocable pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

If, upon a review of the evidence, the director intends to revoke approval of the visa petition again, the director must issue a new NOIR. The new NOIR must list the evidence that supports revocation. If some of that evidence is unknown to the petitioner, the director shall advise the petitioner as required by 8 C.F.R. § 103.2(b)(16)(i). If the director ultimately does revoke approval of the instant visa petition, the director must stipulate to the basis or bases of revocation relied upon, from among the bases listed at 8 C.F.R. § 214.2(h)(11)(iii)(A).

The director's decision will be withdrawn, and the matter will be remanded for entry of a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision.