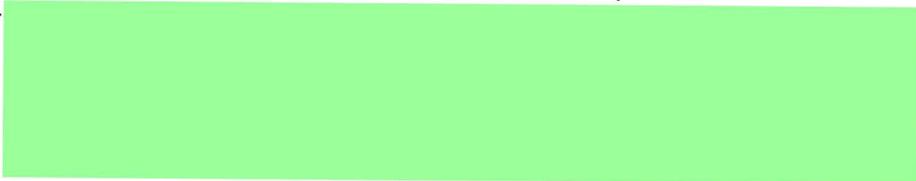




U.S. Citizenship
and Immigration
Services

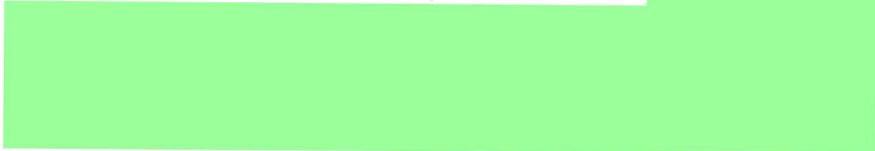
(b)(6)



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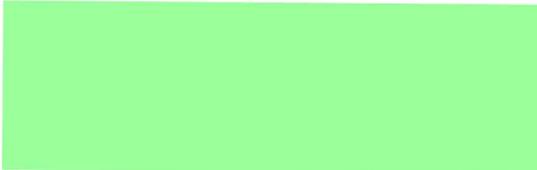
OFFICE: VERMONT SERVICE CENTER FILE: 

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,

Ron Rosenberg
Acting 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) the approval of the petition, and ultimately did revoke the approval of the petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision to revoke the approval of the petition is withdrawn. The matter will be remanded to the service center director for further consideration and action.

On the Form I-129 visa petition, the petitioner describes itself as an information technology firm established in 1999. In order to employ the beneficiary in what it designates as a graphics designer 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 initially approved the petition on May 18, 2009. Subsequent to the petition's approval, the United States Consulate General in Dubai, United Arab Emirates returned the petition to the director for review. The director reviewed the information from the consulate and issued a NOIR, which contained a statement of the ground for the revocation and the time period allowed for the petitioner's rebuttal. In the NOIR, the director stated that the consulate notified U.S. Citizenship and Immigration Services (USCIS) that during the course of a visa interview with the beneficiary the consular officer determined that the beneficiary does not meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C).¹

On June 3, 2010, counsel for the petitioner responded to the NOIR by submitting a brief and additional evidence. On November 30, 2010, USCIS revoked the approval of the petition. In the decision to revoke the approval of the petition, the director quoted excerpts of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the occupational category "Commercial

¹ Title 8 C.F.R. § 214.2(h)(4)(iii)(C) states the following:

Beneficiary qualifications. To qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

(b)(6)

and Industrial Designers" and for the occupational category "Graphic Designers." The director further stated the following:

The record fails to demonstrate that a baccalaureate or higher degree, in a specific field of study is normally the minimum requirement for entry into the particular position, or that the degree requirement is common to the industry in parallel positions among similar organizations.

Therefore, the approval of [the petitioner's] petition is revoked.

Thereafter, counsel for the petitioner submitted an appeal of the decision. In support of the appeal, counsel submitted a brief and additional evidence.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's notice of intent to revoke (NOIR); (3) counsel's response to the NOIR; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The AAO notes that 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.

Accordingly, to comply with the notice requirements of 8 C.F.R. § 214.2(h)(11)(iii), a director's decision to revoke a previously approved petition must be preceded by a NOIR. The NOIR "shall contain a detailed statement of the grounds for the revocation." In the instant case, the director issued a NOIR stating that it had obtained new information that called into question whether the beneficiary is qualified to perform the duties of the proffered position. Later, in the revocation notice, the director stated that the petitioner failed to establish the proffered position qualifies as a specialty occupation.

The petitioner must be provided with notice of all of the grounds for the revocation and be offered an opportunity to submit additional evidence or arguments for consideration. The notice must be in accordance with 8 C.F.R. § 214.2(h)(11)(iii) and include a detailed statement that clearly articulates the grounds for the revocation.

In the instant case, to properly analyze the issue(s) of the beneficiary's qualifications and/or whether the proffered position qualifies as a specialty occupation (as well as any other issues that are material to the case), the petition will be remanded to the director for review and to contemplate the issuance of a new NOIR in accordance with the applicable statutory and regulatory provisions.

ORDER: The director's decision to revoke the approval of the petition is withdrawn. The matter is remanded for further action in accordance with the foregoing and entry of a new decision.