



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 20 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. The director subsequently, upon notice, revoked approval of the visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129 visa petition, the petitioner describes itself as a restaurant management firm with 23 employees. In order to employ the beneficiary in what it designates as a Business Development Analyst position, the petitioner seeks to classify her 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 petition was approved on October 26, 2009. However, on September 1, 2011, the director issued a notice of intent to revoke (NOIR) in this matter. Subsequently, on April 3, 2012, the director revoked approval of the visa petition. The director's revocation of approval of the petition was based on his finding that the evidence available does not indicate that the petitioner is employing the beneficiary in the position specified in the visa petition. The revocation was also based on the finding that the petitioner is not employing the beneficiary in a specialty occupation.

The AAO has determined that the director did not err in his decision to revoke approval of the petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will remain revoked.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's notice of intent to revoke (NOIR); (3) the response to the NOIR; (4) the director's revocation letter; and (5) the Form I-290B and counsel's submissions on appeal.

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.

Evidence in the record shows that the beneficiary received a bachelor's degree in business administration from [REDACTED] Georgia. In both the Form I-129 and the Labor Condition Application (LCA) filed with it, the petitioner specified the Job Title as "Business Development Analyst."

On September 1, 2011, the service center sent the NOIR, referenced above, to the petitioner. In the NOIR, the service center informed the petitioner that a site visit to the petitioner's [REDACTED] Georgia restaurant location revealed that the beneficiary is not working as a business development analyst, a market research analyst, or in any similar position. Specifically, during the site visit, the petitioner's general manager, [REDACTED] who signed the instant visa petition, revealed that the beneficiary was not available during the site visit because she was working at the petitioner's other restaurant location, and that she works as a restaurant manager. The NOIR also specifically stated:

Submit documentary examples of the work product created or produced by the beneficiary for the past H-1B validity period, (i.e., copies of: business plans, reports, presentations, evaluations, recommendations, critical reviews promotional materials, designs, blueprints, newspaper articles, web-site text, news copy, photographs of prototypes, etc. Note: The materials must clearly substantiate the author and date created.

In response, counsel submitted, *inter alia*, (1) pay statements; (2) the first page of a letter, dated March 25, 2009, on the petitioner's letterhead; (3) counsel's own letter, dated October 3, 2011; (4) a profit and loss statement; and (5) what purports to be an organizational chart of the petitioner's operations.

The first page of the March 25, 2009 letter does not include the signature or any other identification of the author. The remainder of the letter is not in the record of proceeding. As the letter is dated March 25, 2009, it may have been prepared for submission in a previous proceeding. That letter states:

As a Business Development Analyst, [the beneficiary] will oversee finances, marketing, and public relations. As such, her job encompasses several lesser job positions, all of which are specialty occupations in their own right. In the financial sector, [the beneficiary] will evaluate potential expansion opportunities and prepare risk assessment studies associated with those expansion options. She will be expected to exercise local fiscal controls consistent with generally accepted accounting principles, prepare financial and budget control statements, and analyze current operation procedures to maximize efficiency and minimize production and operating costs. She will also be responsible for analyzing financial information detailing assets, liabilities, and capital, and preparing balance sheet, profit and loss statements, and other reports to summarize current and projected company financial position. Her job is therefore a higher position than that of an Accountant, which is recognized as being a specialty occupation.

Although that letter may shed some light on the duties the petitioner previously intended to assign to the beneficiary, it does not, of course, address the subsequent admission by the petitioner's general manager that the beneficiary is not employed in the position originally proffered, but is employed as a restaurant manager. As such, and based on the fact that the other pages were not submitted, it is of very little evidentiary value in this proceeding.

The petitioner's president's September 21, 2011 letter states: "As a business development analyst, [the beneficiary] is mainly responsible for overseeing finance, marketing, and public relations of our company." More concretely, the petitioner's president described the following as the beneficiary's "detailed job duties:"

- Managing day to day operating of all major business accounts, including bank accounts and payroll
- Negotiating contracts with advertisement company for existing restaurants and with a real estate company for marketing a new restaurant
- Researching market conditions to open a new restaurant at [REDACTED] Collecting data on competitors, the market outlook, and customer eating habits.
- Meeting with [the petitioner's president] and give new ideas about opening another branch restaurant at [REDACTED] location
- Preparing a Company Business Plan and report it to President of Company
- Supervising about 20 employees, determining staff requirements and interviewing, hiring and training new employees, and overseeing those personnel processes to stimulate business
- Meeting with company web designer in order to make changes based on market trends: [REDACTED]

As to the lack of documentary work product demonstrating that the beneficiary had worked as a business development analyst, the petitioner's president stated:

The way we run our businesses is quite simple: [The beneficiary] analyzed the business processes and met with me regularly to discuss her ideas and the ways that we could implement those ideas. We did not have reports or personnel reviews, etc. Those documents are just not prepared in the course of our business. Also, in my personal way of business, I prefer to speak directly with [the beneficiary] instead of reading reports, since English is not my first language and I have some difficulty understanding those types of documents.

The petitioner's president further stated: "[The beneficiary] was responsible for managing and supervising both location restaurants and she was at the [redacted] location restaurant [at the time of the [redacted] Georgia site visit], so she was unable to speak with the officer about her job performance during the site visit. The AAO observes that, although the petitioner's president did not directly address the statement by the petitioner's general manager that the beneficiary works as a restaurant manager and works a split shift, he confirmed that her work largely consists of managing restaurants.

In his own October 3, 2011 letter, counsel observed that the NOIR misstated that the petitioner is an aluminum manufacturer, established in 1998, with two workers, and surmised that the officer had mistaken the instant petitioner for another petitioner. The AAO agrees that the NOIR contains that error and withdraws that statement made by the director; however, the adverse evidence in this case was sufficiently documented in the NOIR which accorded the petitioner an opportunity to respond to it, that is, the NOIR stated that the beneficiary works as a restaurant manager and that it appeared that the petitioner was not employing the beneficiary as a business development manager as claimed on the Form I-129.

Counsel asserted that the evidence provided demonstrates that the petitioner is employing the beneficiary in the position proffered in the visa petition. Counsel further stated that, although the beneficiary was working as a business development analyst at the time of the site interview, the manager interviewed did not know the specifics of her duties.

None of the evidence submitted shows that the petitioner's general manager is unaware of the duties the beneficiary performs, and counsel is clearly not arguing from evidence. Rather, counsel appears to be attempting to testify as to the facts of this case. The unsupported assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. Counsel's assertion that the petitioner's general manager does not know what duties the beneficiary performs will be accorded no evidentiary weight.

The organizational chart provided purports to identify 22 people whom the petitioner employs. The AAO observes that this is one less person than it claimed, on the visa petition submitted October 1, 2009, to employ. The AAO further observes that the visa petition, the Form G-28 signed on September 30, 2009, and the LCA submitted all identify [redacted] as the petitioner's general manager. He is also the person who was interviewed at the petitioner's location in [redacted] and provided evidence adverse to the petitioner. However, [redacted] is not listed on what purports to

be an exhaustive list of the petitioner's employees, and counsel asserts that, when he was interviewed during the site visit, he did not know the extent of the beneficiary's duties.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

The director revoked approval of the visa petition on April 3, 2012, finding, *inter alia*, that the evidence does not support the proposition that the petitioner is employing the beneficiary in the position proffered in the visa petition.

On appeal, counsel submitted letters and E-mails from various companies, and vacancy announcements.

The vacancy announcements submitted are for positions entitled Business Development – Quick Service Restaurant Industry; and Manager, new business development. The purpose for which those vacancy announcements were submitted is unclear, however, they do not appear to be evidence that the beneficiary is currently employed as a business management analyst or as a business development analyst, rather than as a restaurant manager.

The letters and E-mails provided show that the beneficiary conducted business and negotiations on the petitioner's behalf in obtaining various goods and services. Those transactions are consistent with the beneficiary working as a restaurant manager in the petitioner's business.

Counsel stated that the most similar position in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* to the proffered position is that of Management Analyst. Counsel also provided the following description of the duties of the proffered position:

Financial Development & Internal Auditing (25%)

In this area of the job, [the beneficiary] utilizes her extensive coursework in Advanced Accounting, Corporate Research, Auditing, and Financial Management to make successful economic forecasts for our company. One of her Profit and Loss Projection statements is attached for your review. The duties described below cannot be performed by an employee who did not have proper academic study in the relevant areas. [The beneficiary] provides the business owner with a cost analysis of the business in order to determine the most profitable avenues for the corporation. After determining the budgetary needs of the business and preparing the balance sheet, and profit/loss statements, [the beneficiary] develops and maintains a management control system to aid in financial planning. She studies the past sales data to identify patterns based upon seasonality and economic environment both within the specific industry

as well as related business sectors. [The beneficiary] is also tasked with developing predictive models for levels of inventory based upon analysis of sales data. She develops models to predict sales and ensure inventory levels are in line with the expansion of the business. She is also responsible for identifying the means to ensure maximum liquidity of corporate assets while minimizing cost and maximizing sales and profits. Lastly, she develops monthly, quarterly and annual recommendations on all her projects based upon her internal auditing and recommends the strategic direction for the entire business. [USCIS] needs to take into consideration that due to the English limitation of the business owner, much of the work [REDACTED] does for the owner is done verbally and in Korean. [REDACTED] is also in charge of at least two staff employees (one from each restaurant) who assist her in compiling data for various accounting measures.

Marketing/Public Relations (20%):

In marketing and public relations, [the beneficiary] is responsible for marketing the company's services to the relevant communities. She designed a marketing plan geared towards attracting customers to the business and supply contractors. The convenience retail management industry has a highly competitive landscape and it is crucial to employ a Business Development Analyst that can leverage the marketing and retail merchandising aspects of the company.¹ Her responsibilities include coordination of both external and internal local and international marketing research practices, analyzing and implementing the use of various sales tools, and coordinating the start-up of new expansion projects. In the [*Handbook*], the requirement of a Bachelor's Degree, at a minimum, for marketing and PR management positions is noted.

Contracts/Expansion Project Development (40%):

One of [the beneficiary's] most important duties with [the petitioner] will be to develop an in-house business model for the company to project the need and ambition to further expand its locations. She provided a presentation in 2009 to the business owner, which led to the owner agreeing to and successfully launching another location. The presentation outline is attached for your review.

[The beneficiary] currently does and will also be negotiating services contracts as needed and working with other companies to ensure fulfillment of contracts by cooperating with the engineers, technicians, and managers in those businesses. She will essentially coordinate her efforts with the business developers employed by other companies in order to conduct project development and pre-construction meetings.

¹ The AAO observes that the petitioner is not in the convenience retail management industry, but attaches no particular significance to counsel's misstatement.

Prequalification assessments of vendors, manufacturers and subcontractors is a crucial component of business expansion. Additionally, she will be responsible for comprehensive project development schedules, opportunity planning reports, contract price justification, and preparing detailed project implementation timelines. In this area of the job, [the beneficiary] will negotiate and close contracts that meet the business expansion profit objectives of [the petitioner]. The attached contracts and correspondence of the business vendors with [the beneficiary] show that her position is one of vital importance, and inclusive of negotiations, marketing and management.

Supply Chain Management (15%):

The job duties for a Business Development Analyst encompass several different areas of business development and management science, including those areas that rely on strong supply-chain management. [The beneficiary] has established procedures for [the petitioner] including distribution planning, and inbound/outbound logistics. She is responsible for streamlining the entire supply-chain process and thereby reducing costs for [the petitioner] on a continuous basis. These changes will be reflected in her logistics reports to the owner and forms the foundation on which the company will seek to enter new target markets or expansion in areas where the company has ready [sic] achieved profitable growth. [The beneficiary] does and will use her business background to manage large volumes of business data common to medium size businesses within the restaurant industry and formulate a plan of action for [the petitioner].

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The *Handbook* includes restaurant managers in its Food Services Managers chapter. The *Handbook* describes the duties of food service manager positions as follows:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve food and beverages to customers. Managers ensure that customers are satisfied with their dining experience.

Duties

Food service managers typically do the following:

- Interview, hire, train, oversee, and sometimes fire employees
- Oversee the inventory and ordering of food and beverage, equipment, and supplies

² All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

- Monitor food preparation methods, portion sizes, and the overall presentation of food
- Comply with health and food safety standards and regulations
- Monitor the actions of employees and patrons to ensure everyone's personal safety
- Investigate and resolve complaints regarding food quality or service
- Schedule staff hours and assign duties
- Keep budgets and payroll records and review financial transactions
- Establish standards for personnel performance and customer service

Besides coordinating activities among the kitchen and dining room staff, managers must ensure that customers are served properly and in a timely manner. They monitor orders in the kitchen and, if needed, they work with the chef to remedy any delays in service.

Food service managers are generally responsible for all functions of the business related to people. For example, most managers interview, hire, train, and, when necessary, fire employees. Finding and keeping good employees is a challenge for food service managers. Managers schedule work hours, making sure that enough workers are present to cover each shift—or managers may have to fill in themselves.

Food service managers plan and arrange for clean tablecloths and napkins, for heavy cleaning when the dining room and kitchen are not in use, for trash removal, and for pest control when needed.

In addition, managers do many administrative tasks, such as keeping employee records, preparing the payroll, and completing paperwork to comply with licensing, tax and wage, unemployment compensation, and Social Security laws. While they may give some of these tasks to an assistant manager or bookkeeper, most general managers are responsible for the accuracy of business records. Managers also keep records of supply and equipment purchases and ensure that suppliers are paid.

Many full-service restaurants have a management team that includes a general manager, one or more assistant managers, and an executive chef. Managers add up the cash and charge slips and secure them in a safe place. Many managers also lock up the establishment; check that ovens, grills, and lights are off; and switch on the alarm system.

The *Handbook* describes the occupation of management analyst as follows:

What Management Analysts Do

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues

Duties

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports, including, sometimes, building and using sophisticated mathematical models
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Business-and-Financial/Management-analysts.htm#tab-2> (last visited June 19, 2013).

The AAO observes that management analysts propose ways to improve an organization's efficiency, whereas food service managers supervise the operations of a restaurant or other food service venue. In the instant case, in addition to the characterization by the petitioner's general manager of the position in which the beneficiary was then employed as a restaurant manager position, the *Handbook's* description of the duties of a food service manager suggests that the beneficiary's duties are entirely consistent with a food service manager position, overseeing the lunch and dinner operations of a restaurant, and much less consistent with a management analyst position.

Counsel did provide what purports to be a profit and loss statement projecting the results of the petitioner's operations through 2014. That document, however, contains no indication that the beneficiary produced it. Even if it had demonstrably been produced by the beneficiary, however, it contains no indication that the projections required the skills of a management analyst or a business development analyst to produce. For instance, the statement indicates that in 2014 the petitioner anticipates \$1,621,224.87 in sales and \$567,428.70 in cost of goods sold, but contains no indication of the methods used to generate those precise numbers. The record contains no indication that generating those numbers and entering them into a spreadsheet required the services of a management analyst. Even if presumed to be the beneficiary's work product, the production of that document, especially if it was based, as it appears to be, solely on conjecture, would not necessarily elevate the beneficiary's position from that of a food service manager to any other position.

The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner's response to the NOIR failed to overcome the director's finding that the petitioner is not employing the beneficiary in the occupation claimed in the petition. The appeal will be dismissed and approval of the visa petition will remain revoked on this basis.

The remaining basis upon which the visa petition was denied pertains to whether the proffered position was shown to be a specialty occupation position. The record as constituted when the petition was initially approved appears to have contained insufficient documentary evidence pertinent to the duties of the proffered position. The visa petition appears to have been approved on the strength of the assertion that it is a business development analyst position.

To determine whether a particular job qualifies as a specialty occupation, however, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

Given that the record contained no description of the duties of the proffered position when the visa petition was approved, that approval was occasioned by gross error. Approval of the visa petition was correctly revoked on this basis. The appeal will be dismissed and approval of the visa petition will remain revoked on this basis.³

The record suggests additional issues that were not addressed in the NOIR or the decision of revocation but that, nonetheless, should preclude approval of this visa petition.

As was noted above, the beneficiary has a bachelor's degree in business administration. The record contains no evidence that she studied any particular concentration or specialization within the broad area of business administration. The record contains no evidence that she has any other college degree, or the equivalent of any other college degree. The beneficiary was apparently found to be qualified to perform services in a specialty occupation position on the strength of that bachelor's degree in business administration.

A degree in business administration is a general degree that is insufficient to qualify the holder as a member of the professions unless the academic courses pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and unless that person is engaged, or intends to engage, in that occupation. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). An otherwise undifferentiated degree in business administration is not a degree in a specific specialty and cannot qualify one to work in any specialty occupation position. The approval of the visa petition without evidence that the beneficiary had a minimum of a bachelor's degree *in a specific specialty* or its equivalent was gross error.

³ The AAO is aware that the instant petition was filed as an "amended petition" and that the petitioner submitted a copy of an approval notice for an H-1B petition (). However, the record of proceeding does not contain copies of the visa petition that the petitioner claims was previously approved. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See Hakimuddin v. Dep't of Homeland Sec.*, No. 4:08-cv-1261, 2009 WL 497141, at *6 (S.D. Tex. Feb. 26, 2009); *see also Larita-Martinez v. INS* 220 F.3d 1092, 1096 (9th Cir. 2000) (stating that the "record of proceeding" in an immigration appeal includes all documents submitted in support of the appeal). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

However, the NOIR did not discuss this issue, and it cannot form any portion of the basis for today's decision. The AAO observes, though, that if the instant visa petition were otherwise approvable, the matter would be remanded to provide notice of this basis for revocation, to accord the petitioner an opportunity to respond, and to accord the director an opportunity to consider subsequently revoking approval of the visa petition on this basis.

The appeal will be dismissed and approval of the visa petition will remain revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(1) and (5) because the petitioner is not employing the beneficiary in the capacity specified in the petition and the petition's approval involved gross error.

As a final issue, USCIS electronic records indicate that the petitioner has filed a request to extend the validity of the instant visa petition (receipt number [REDACTED]). Subsequent approval for extension of a revoked visa petition must necessarily be revoked on notice, as an invalid visa petition may not be extended. See 8 C.F.R. § 214.2(h)(14) (stating in pertinent part that "[a] request for a petition extension may be filed only if the validity of the original petition has not expired"); 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) (requiring revocation on notice when the approval violated paragraph (h) of 8 C.F.R. § 214.2).

Further, even if the instant visa petition had not already been revoked, a subsequent approval of a visa petition filed by the petitioner for the beneficiary should be revoked on notice, or at least further reviewed for possible revocation, on the grounds identified herein as a basis for the instant visa petition's revocation.

ORDER: The appeal is dismissed. The approval of the nonimmigrant visa petition will remain revoked.

FURTHER ORDER: The director shall review other visa petitions filed by the petitioner for the beneficiary. In the case of those visa petitions that may be pending, the director shall determine whether any or all of the issues raised in this decision should be considered as a basis for denial. As to petitions that may have been approved (e.g., [REDACTED]), the director shall determine whether to accord the beneficiary notice of these issues and an opportunity to respond and, subsequently, if he does provide such notice and opportunity, whether to ultimately revoke approval of such visa petitions on any or all of the bases discussed in this decision as well as any other grounds that may be identified in the subsequent revocation on notice proceedings.