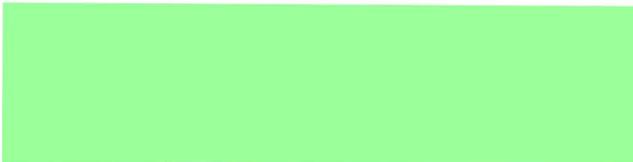


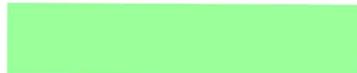


U.S. Citizenship
and Immigration
Services

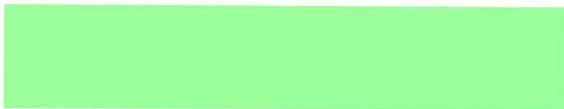
(b)(6)



DATE: **JUN 29 2013** OFFICE: VERMONT SERVICE CENTER



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 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,

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), and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on September 1, 2011. In the Form I-129 visa petition and supporting documentation, the petitioner described itself as an international trade company established in 1996. In order to employ the beneficiary in what it designated as an accountant position, the petitioner sought 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 position was approved for what was designated as an accountant position. However, thereafter an onsite visit was conducted at the beneficiary's work location, as specified in the petition. Upon subsequent review of the record of proceeding upon which approval of the petition was based, the director issued a NOIR, and ultimately revoked the approval of the petition. Thereafter, counsel for the petitioner submitted an appeal.

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

U.S. Citizenship and Immigration Services (USCIS) is required to revoke on notice the approval of an H-1B petition when one of five grounds is found. Specifically, 8 C.F.R. § 214.2(h)(11)(iii)(A) 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.

- (A) 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.

As a preliminary matter, the AAO finds that the basis specified for the revocation action in the instant matter is a proper ground for such action. USCIS must be able to verify the information provided in the petition to further determine eligibility for an immigration benefit and/or compliance with applicable laws and authorities. To that end, agency verification methods may include but are not limited to review of public records and information; contact via written correspondence, the Internet, facsimile or other electronic transmission, or telephone; unannounced physical site inspections; and interviews. *See* 8 C.F.R. §§ 103, 204, 205, and 214, 8 U.S.C. §§ 1103, 1155, 1184 (2013). In the instant case, the beneficiary was not at the business premises on two separate occasions when the site visits were conducted. The director notified the petitioner that the evidence suggests that the beneficiary has not been employed in a specialty occupation position for the petitioner on a full-time basis, and the petitioner was provided an opportunity to submit evidence in support of the petition. The director's statements in the NOIR were adequate to notify the petitioner of the intent to revoke the approval of the petition.

As will be evident in the discussion below, the AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner has failed to credibly establish that the beneficiary is involved in primarily specialty occupation job duties within the petitioning company. The documents submitted in response to the NOIR and on appeal fail to effectively rebut and overcome the basis for revocation. Accordingly, the appeal will be dismissed, and approval of the petition will remain revoked.

In the petition signed on July 30, 2011, the petitioner indicates that it is seeking the beneficiary's services as an accountant on a full-time basis at the rate of \$45,000 per year. In the August 15, 2011 letter of support, the petitioner describes the proposed duties of the beneficiary as follows:

- He will be responsible to review and analyse [sic] the accounts of purchasing and sales for each trading contract, monitors, and documents each business transaction to be posted to the General ledger for accuracy and completeness;
- He will manage company's bank accounts and will audit bank payments according to the terms and conditions listed in company's trading contract with foreign trade;
- He will compile and analyse [sic] financial information to prepare entries to accounts, such as ledger accounts, documenting business transactions;
- He will also analyse [sic] information detailing assets, liabilities and capital;
- [The beneficiary] will be involved in preparing Income Tax, Balance sheet, and profit and loss statements; [and]

- He will assist the company officials in checking, and reviewing methods of payments to the customers, certifying bank information, type of payment, and paying certificates against the requested documents such as Commercial Invoice, Bill of Lading, and Packing Listings.

The petitioner also states that "[t]he position requires a degreed professional Accountant, and must possess a Bachelor's degree in Accounting, Commerce, Business Administration or other related field to understand accounting principles."

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Accountants and Auditors" - SOC (ONET/OES Code) 13-2011, at a Level I (entry level) wage.

The petition was approved for what the petitioner designated as an accountant position. On November 19, 2009, an administrative site visit was conducted to verify the information within the petition. The beneficiary was not on-site on the day of the site visit and, therefore, it could not be determined that the job duties performed by the beneficiary are the duties of someone employed in a specialty occupation position. Subsequently, in a follow up site visit, the officer contacted the beneficiary via his personal phone number and the beneficiary informed the officer that he was not at the petitioning company.

After reviewing the information in the record of proceeding and the site visit report, the director issued a notice of intent to revoke the approval of the petition. The NOIR contained a detailed statement regarding the information that USCIS had obtained and notified the petitioner that it was afforded an opportunity to provide evidence to overcome the stated grounds for revocation.

On February 21, 2012, counsel responded to the NOIR with a brief and additional evidence. In the brief, counsel provided the same job duties of the proffered position that were previously submitted with the initial petition. Specifically, counsel submitted, in part: (1) copies of the petitioner's invoices; (2) pay statements issued to the beneficiary for the periods ending June 30, 2011, July 31, 2011, October 31, 2011, November 30, 2011, and December 31, 2011; (3) the beneficiary's Forms W-2 from 2006 to 2010; (4) the beneficiary's Federal Income Tax Returns for 2009 and 2010; (5) the petitioner's organizational chart; (6) a letter from [REDACTED] petitioning company; and (7) corporate documents for [REDACTED]

The director reviewed the information provided but found the information submitted insufficient to refute the findings in the NOIR. The director noted that that the petitioner had not established that the beneficiary is involved in primarily specialty occupation job duties within the petitioner's business operations. The director revoked the approval of the petition on August 15, 2012. Thereafter, counsel submitted an appeal.

The AAO reviewed the record of proceeding in its entirety, including the documentation submitted with the petition, in response to the NOIR and in support of the appeal, as well as the information

obtained during the site visit. As will be discussed, the petitioner has not established that the beneficiary is performing job duties that would be considered qualifying as specialty occupation.

In the instant case, counsel claims that "[t]he beneficiary's job duties are those that are performed by someone in a specialty occupation." However, the petitioner failed to submit documentary evidence to establish the actual day-to-day duties performed by the beneficiary. Furthermore, upon review of the job duties submitted with the initial petition and in response to the NOIR, the AAO notes that the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

That is, the AAO further notes that the petitioner's job description for the proffered position is generalized and generic, as the petitioner fails to convey either the substantive nature of the work that the beneficiary would actually perform, or any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform the proffered position.

The petitioner failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

Accordingly, as the petitioner has not presented a cohesive account of the duties and responsibilities that the beneficiary would perform as its "accountant," it has failed to meet its burden of demonstrating that the proffered position is a specialty occupation. Therefore, the director properly revoked the approval of the petition, and the appeal must be dismissed.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.