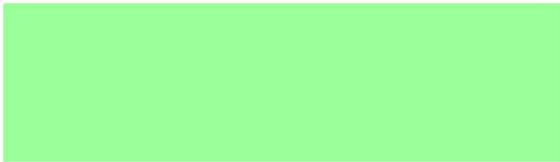
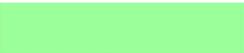


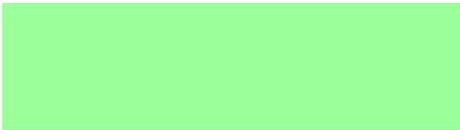


U.S. Citizenship
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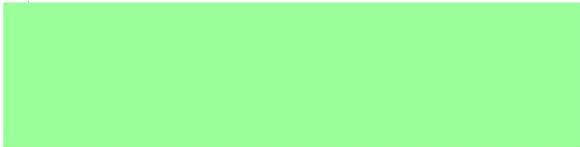


DATE: **JAN 02 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 (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.

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
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 The director's decision to revoke the approval of the petition is withdrawn.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 a healthcare software solutions provider established in 2008. In order to employ the beneficiary in what it designates as a computer systems analyst 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 November 23, 2011. Subsequent to the petition's approval, the United States Consulate General in [REDACTED] 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 basis 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 is not qualified to perform duties in a specialty occupation position. The director further stated that "[v]erification from [REDACTED] the signatory of the beneficiary's experience letter from [REDACTED] revealed that the letter is a forgery." The director indicated that, based upon the U.S. Consulate's finding, it appeared that the beneficiary was not eligible for H-1B classification in accordance with the applicable statutory and regulatory provisions.¹ Further, the director noted that the statement of facts contained in the

¹ The provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(b)(6)

petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact.²

On January 14, 2013, the petitioner responded to the NOIR and claimed that the letter from [REDACTED] was legitimate. In support of this assertion, the petitioner provided additional evidence, including a letter from Mr. [REDACTED] and pay roll records from [REDACTED] for the beneficiary.

The director reviewed the evidence submitted in response to the NOIR, and, on February 11, 2013, revoked the approval of the petition. In the decision to revoke the approval of the petition, the director noted that "the realization by USCIS that it made an error in judgment in initially approving a visa petition may, in and of itself, be good and sufficient cause" for revoking a visa approval. The director acknowledged that the petitioner responded to the NOIR, but claimed that the petitioner had not provided sufficient evidence to demonstrate that the beneficiary is qualified to serve in a specialty occupation position. The director continued by stating the following:

The evaluation of the beneficiary's foreign credentials is based on education and employment experience, however the evaluator has not demonstrated specifically how the evaluation was made nor the basis for making it (including copies of the relevant portions of any research materials used). Neither the petitioner nor the evaluator has demonstrated that the beneficiary's experience was experience in a specialty occupation. In addition, the evaluator has not shown how the various aspects of the beneficiary's employment experience satisfy the course work requirements of a baccalaureate degree in computer information systems. Accordingly, the evaluation is accorded little weight.

Furthermore, USCIS is unable to establish equivalency based on the provided evidence nor has the petitioner demonstrated that the beneficiary has recognition of expertise in the specialty.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(ii)(D). . . . Therefore, as of this date, the petition is revoked.

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

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- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

² Title 8 C.F.R. § 214.2(h)(11)(iii)(A)(2) states that the director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that the statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact.

(b)(6)

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's NOIR; (3) the petitioner's response to the NOIR; (4) the revocation notice; 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 and "shall contain a detailed statement of the grounds for the revocation." In the instant case, the director issued a NOIR indicating that the U.S. Consulate had obtained new information with regard to an employment letter, and that "[a]s such, the statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact."

Later, in the revocation notice, the director concluded that USCIS erroneously approved the petition based on an evaluation report prepared by [REDACTED] which had been provided with the initial

H-1B petition. The AAO observes that the deficiencies of the evaluation report were not provided in the NOIR.

The petitioner must be provided with a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and be offered an opportunity to submit additional evidence or arguments for consideration in accordance with 8 C.F.R. § 214.2(h)(11)(iii). The AAO finds that in the instant case, the director's NOIR was insufficient to notify the petitioner of the basis upon which the petition was ultimately revoked.

The petition will be remanded to the director for review and to contemplate the issuance of a new NOIR in accordance with the applicable 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.