



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 06 2015** 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:
[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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a ten-employee assisted living facility¹ established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time dietitian position at a salary of \$35,000 per year,² the petitioner seeks to extend her classification 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 February 7, 2011. Subsequent to the petition's approval, U.S. Citizenship and Immigration Services (USCIS) conducted a site visit at the petitioner's reported address. The director reviewed the information from the site visit report and issued two notices of intent to revoke (NOIR) approval of the petition, both of which contained a statement of the proposed grounds for revocation and stated the time period allowed for rebuttal.

Counsel for the petitioner responded to the NOIRs by submitting letters and additional evidence. The director revoked approval of the petition on April 11, 2014, concluding that the beneficiary did not possess the requisite state license to practice as a dietitian. On appeal, counsel submits a letter from the petitioner and additional evidence.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's NOIRs; (3) the petitioner's responses to the NOIRs; (4) the director's revocation notice; and (5) the Form I-290B (Notice of Appeal) and supporting documentation. We reviewed the record in its entirety before issuing our decision.

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 petitioner provided a North American Industry Classification System (NAICS) Code of 623220, "Residential Mental Health and Substance Abuse Facilities." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "623220 Residential Mental Health and Substance Abuse Facilities," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited November 19, 2014).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Dietitians and Nutritionists" occupational classification, SOC (O*NET/OES) Code 29-1031, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

- (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.

Subsequent to the petition's approval, the director issued a NOIR to the petitioner on March 19, 2013, stating that USCIS had obtained new information regarding the beneficiary's employment with the petitioner. Specifically, the director stated that during the site visit, the investigator discovered that the petitioner paid the beneficiary less than the prevailing wage in 2010, and the director requested evidence to demonstrate that the beneficiary was earning wages consistent with the terms and conditions of the approved petition. On February 26, 2014, the director issued the second NOIR, noting that the petitioner had submitted documents for the beneficiary's 2011 and 2012 wages, but not for 2010. The director also stated that the beneficiary is required to be licensed in order to practice as a dietitian in Florida, and requested evidence demonstrating that the beneficiary possesses such licensure. In response to the NOIR, counsel for the petitioner stated that the beneficiary "has always worked in the State of Florida without a state license, which has never been an issue up to this point." The director did not find counsel's argument with regard to the licensure issue persuasive, and she revoked approval of the petition on April 17, 2014.

Upon review of the record, we find that the content of the NOIRs comported with the regulatory notice requirements, as they provided detailed statements that conveyed the grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and that they also allotted the petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B).

On appeal, neither counsel nor the petitioner identifies any specific erroneous conclusion of law or statement of fact in the director's decision. The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The appeal, therefore, must be summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v). However, in the interest of providing the petitioner with a full adjudication we will nonetheless review the merits of the director's April 17, 2014 decision revoking approval of the petition.

On appeal the petitioner submits a letter from its owner stating that the beneficiary is in compliance with "the basic requirement mandated by the Agency for Health Care Administration (AHCA) in the State of Florida," and submits copies of certificates and a list of courses that the beneficiary has completed. In addition, the petitioner states that the beneficiary "prepare[s] and monitor[s] menus that have been approved by a Licensed Dietitian."

The petitioner has identified the proffered position as a dietitian, and it obtained an LCA certified for a position located within the "Dietitians and Nutritionists" occupational category. We find that the petitioner has failed to establish that a license is not required for the proffered position in the State of Florida under the controlling statutory and regulatory provisions. More specifically, we reviewed the Florida Statutes regarding the requirements to practice as a dietitian. The sections most relevant to this proceeding are outlined at Fla. Stat. § 468 (2010), "Dietetics and Nutrition Practice," which states in relevant parts the following:

468.504 License required.—No person may engage for remuneration in dietetics and nutrition practice or nutrition counseling or hold himself or herself out as a practitioner of dietetics and nutrition practice or nutrition counseling unless the person is licensed in accordance with the provisions of this part.

* * *

468.517 Prohibitions; penalties.—

(1) A person may not knowingly:

(a) Engage in dietetics and nutrition practice or nutrition counseling for remuneration unless the person is licensed under this part;

(b) Use the name or title "dietitian," "licensed dietitian," "nutritionist," "licensed nutritionist," "nutrition counselor," or "licensed nutrition counselor," or any other words, letters, abbreviations, or insignia indicating or implying that he or she is a dietitian, nutritionist, or nutrition counselor, or otherwise hold himself or herself out as such, unless the person is the holder of a valid license issued under this part;

* * *

- (2) A person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

The plain language of these statutes indicates that licensure is required to work as a dietitian in the State of Florida. Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), states that an alien applying for classification as an H-1B nonimmigrant worker must possess "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation."

Pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license "prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation." The beneficiary clearly does not satisfy this criterion.

Upon review of the record of proceeding, we find that the evidence of record neither (1) demonstrates that the beneficiary is licensed to perform the duties of the proffered position nor (2) contains sufficient evidence to demonstrate that a license is not required to perform its duties. Thus, the petitioner has failed to establish eligibility for the requested benefit under Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A).

Consequently, even if 8 C.F.R. § 103.3(a)(1)(v) did not mandate summary dismissal of this appeal, the petition could still not be approved because the evidence of record does not establish that the beneficiary possesses the appropriate license required by the State of Florida to perform the duties of the proffered position, and the director properly revoked approval of this petition.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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