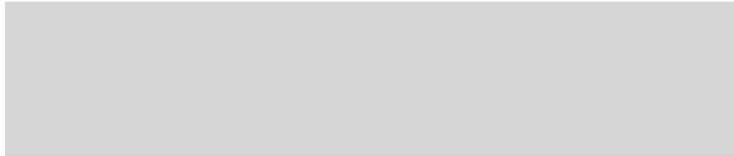




U.S. Citizenship  
and Immigration  
Services

(b)(6)



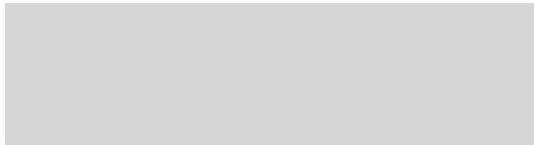
DATE: JUL 31 2015

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the nonimmigrant visa petition. In response to new evidence and upon review of the record, the Director issued a Notice of Intent to Revoke (NOIR), and ultimately did revoke the approval of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

## I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 600-employee "Systems Integration & Information Technology Related Services" firm established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as a "Programmer 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 approved the visa petition on December 23, 2010. However, on March 1, 2013 the Director issued an NOIR in this matter. A response to the NOIR was not received. Subsequently, on January 15, 2015, the Director revoked approval of the visa petition. The petitioner filed a timely appeal on January 30, 2015.

The Director's revocation of approval of the petition was based on her finding that the evidence does not demonstrate that (1) the beneficiary will work in the claimed work location, (2) the petitioner has employed the beneficiary in a specialty occupation, (3) the petitioner met the employer-employee relationship requirement, and (4) the Labor Condition Application (LCA) is valid for all work locations.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the Director's NOIR; (3) the Director's revocation decision; and (4) the Notice of Appeal or Motion (Form I-290B) and the petitioner's submissions on appeal. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

Upon review, we have determined that the Director did not err in her decision to revoke approval of the petition. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed, and approval of the petition will remain revoked.

## II. LEGAL FRAMEWORK

U.S. Citizenship and Immigration Services (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:

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<sup>1</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (1) The beneficiary is no longer employed by the petitioner in the capacity 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 . . . .

### III. ANALYSIS

In the visa petition and supporting materials, the petitioner stated that it would provide the beneficiary, through Pacific Management Systems, Inc. to work on a project in the offices of [REDACTED] California.

The LCA submitted with the visa petition identifies two work locations. One is the [REDACTED] California location and the other is the petitioner's own location in [REDACTED], Illinois. As such, the LCA is certified for employment in and near [REDACTED] California and [REDACTED] Illinois. It is not valid for employment in any other area.

Subsequent to the petition's approval, the Director issued an NOIR to the petitioner, stating that USCIS had obtained new information regarding the beneficiary's employment with the petitioner. Specifically, the Director observed that in an interview before a consular officer in [REDACTED] the beneficiary revealed that he would not be working on the [REDACTED] project, but would be placed through a middle vendor, [REDACTED] on a project for end-client [REDACTED] at [REDACTED] California. Although the Director offered the petitioner an opportunity to respond to the NOIR, no response was then received. The Director revoked approval of the visa petition.

Upon review of the record, we find that USCIS records indicate that the NOIR was mailed to the petitioner's address of record. We also find that the NOIR properly placed the petitioner on notice that revocation of the approval of the petition was contemplated within the scope of the revocation-on-notice provisions. The record does not indicate that the NOIR was returned as undeliverable. Further, even if the Director had erred as a procedural matter in not issuing an NOIR, which the record does not support, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner yet another opportunity to supplement the record with new evidence.

As to the issue of the location where the beneficiary was working pursuant to the instant visa petition, the petitioner stated:

During the adjudication of the petition, the project at [REDACTED] ended. The beneficiary was immediately moved to a position as a Programmer Analyst at the end-client, [REDACTED] facility. The Petitioner filed an LCA for this new location, effective 12/31/2010 to 12/12/2013, which was later withdrawn. [Parenthetical omitted.] The Petitioner did not receive a Request for Evidence on the petition, and it was approved on December 23, 2010. [Parenthetical omitted.]

The petitioner concedes that the beneficiary was moved to a project at a [REDACTED] facility which was not listed on the Form I-129 and the accompanying LCA. A change in the terms and conditions of employment of a beneficiary that may affect eligibility under section 101(a)(15)(H) of the Act is a material change. *See* 8 C.F.R. § 214.2(h)(2)(i)(E); *see also* 8 C.F.R. § 214.2(h)(11)(i)(A) (requiring that a petitioner file an amended petition to notify USCIS of any material changes affecting eligibility of continued employment or be subject to revocation). Having changed the beneficiary's place of employment to a geographical area not covered by the original LCA, the petitioner was required to immediately notify USCIS and file an amended or new H-1B petition, along with a corresponding LCA certified by DOL, with both documents indicating the relevant change.

We also find that the duties the beneficiary performed at [REDACTED] have not been sufficiently shown to be specialty occupation duties. The skeletal description<sup>2</sup> provided in the [REDACTED] documentation is insufficient to demonstrate that the duties the beneficiary performed qualify as specialty

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<sup>2</sup> The only evidence from [REDACTED] pertinent to the services the beneficiary would provide is a letter, dated April 27, 2001, from [REDACTED] signing as a Senior HRIS & Compensation Analyst at [REDACTED]. It lists the following duties:

- Analysis, design and development of Deal sheets System and Employee Admin applications
- Develop the enhancements to the Deal sheets System
- Support and maintenance of Deal sheets System and Employee Admin applications

occupation duties by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. As recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. See *Defensor v. Meissner*, 201 F.3d 384, 387-388 (5th Cir. 2000). The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. The evidence, therefore, does not demonstrate that the petitioner employed the beneficiary in a specialty occupation position. The evidence is also insufficient to demonstrate that the petitioner had the requisite employer-employee relationship with the beneficiary while he was working at LeapFrog's location.

Finally, the evidence indicates that the petitioner employed the beneficiary in [REDACTED] California, a location for which the LCA initially submitted was not valid. However, as discussed earlier, an H-1B employer must file an amended or new H-1B petition when a new LCA is required due to a change in the H-1B worker's place of employment. A change in the terms and conditions of employment of a beneficiary that may affect eligibility under section 101(a)(15)(H) of the Act is a material change. See 8 C.F.R. § 214.2(h)(2)(i)(E); see also 8 C.F.R. § 214.2(h)(11)(i)(A) (requiring that a petitioner file an amended petition to notify USCIS of any material changes affecting eligibility of continued employment or be subject to revocation).

For the foregoing reasons, the visa petition was revocable pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(4). The appeal will be dismissed and approval of the visa petition will remain revoked on both bases.

#### IV. CONCLUSION

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.