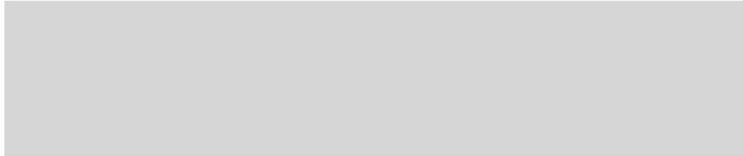




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **MAR 26 2015** OFFICE: VERMONT 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.

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 petition will be remanded to the director for further action consistent with this decision.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center. On the Form I-129 visa petition, the petitioner describes itself as a nursery and plant supplier that was established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Head Grower/Production Manager" position, the petitioner seeks to extend his 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. Subsequent to the petition's approval, U.S. Citizenship and Immigration Services conducted a site visit at the reported address of the petitioner's place of business. The director reviewed the information from the site visit report and issued a Notice of Intent to Revoke (NOIR), which contained a statement of the proposed grounds for revocation and stated the time period allowed for the petitioner's rebuttal.

The petitioner responded to the NOIR by submitting a letter and additional evidence. Upon review of the evidence, the director revoked the approval of the petition, stating, in part, the following:

On April 9, 2014, U.S. Citizenship and Immigration Services (USCIS) sent you a notice of intent to revoke the approval of your Form I-129 H-1B petition. Based on the findings of an administrative site visit which was conducted on April 18, 2012 as part of USCIS's Administrative Site Visit Verification Program (ASVVP), it appeared that (1) you were not employing the beneficiary in the specialty occupation established by the terms and conditions of the approved petition; (2) the Labor Condition Application (LCA) did not support your petition; and, (3) a valid employee-employer relationship did not exist between you and the beneficiary.

Pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A), you were afforded the opportunity to address all of the reasons for revocation, to include the beneficiary no longer being employed by you in the capacity specified in the petition.

The response has resolved all other issues identified in the intent to revoke. Through evidence provided in your response to intent to revoke, which was received on May 12, 2014, it is confirmed that you no longer employ the beneficiary.

While you have not requested a withdrawal of this petition, your petition is hereby revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(B).

The regulation at 8 C.F.R. § 103.2(b)(19) states that the director will notify a petitioner in writing of a decision made on a benefit request. Upon review, we find that the director's decision does not provide a sufficient explanation for revoking the approval of the petition. Thus, the petition will be remanded to the director for further action and entry of a new decision.

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, the director's decision will be withdrawn and the matter will be remanded.

**ORDER:** The director's decision is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision.