

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

DUPLICATE COPY

D3



FILE: SRC 05 017 53012 Office: TEXAS SERVICE CENTER Date: JUL 02 2007

IN RE: Petitioner:
Beneficiary:



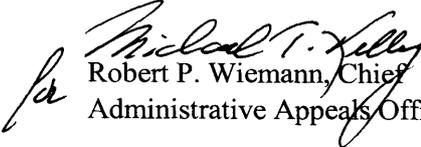
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Texas Service Center revoked the previously approved nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The decision of the director will be withdrawn. Approval of the petition is not revoked.

The petitioner states it is a seed processor company. The petitioner seeks to employ 13 named beneficiaries as packers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b). The director revoked the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A), following a CIS investigation of the attorney of record which "raised questions as to the legitimacy of the I-129 petition."

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation dated October 26, 2004; (2) the director's notice of intent to revoke (NOIR) dated January 24, 2007; (3) the director's February 28, 2007 notice of revocation; and (4) current counsel's request for additional time to respond. The AAO reviewed the record in its entirety before issuing its decision.

On October 26, 2004, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ 13 named beneficiaries in the H-2B classification for the period January 2, 2005 to October 2005. The director approved the petition. On January 24, 2007, the director notified the petitioner of her intent to revoke approval of the H-2B petition based on a CIS investigation of the attorney on record. The director subsequently revoked approval of the petition on February 28, 2007. The only issue before the AAO is whether the director appropriately revoked the approval.

The AAO now turns to the basis for the director's denial, the CIS investigation of the attorney on record, and whether this action provided the director with grounds for revoking the H-2B petition under the language at 8 C.F.R. § 214.2(h)(11)(iii)(A), the regulation outlining the circumstances under which a Form I-129 petition's validity will be rescinded.

The regulation at 8 C.F.R. § 214.2(h)(10)(iii), which governs revocations that must be preceded by notice, states:

(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; 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.

As shall be evident below, the director's revocation attempts have not complied with the notice and decision requirements of the Citizenship and Immigration Services (CIS) regulations on revocation.

On February 27, 2007, the director sent a decision to revoke approval of the petition. The director asserted the following reason for revocation:

A Service investigation was conducted which raised questions as to the legitimacy of the I-129 petition. The petitioner utilized the services of [REDACTED] and her partners recruit temporary workers who are charged fees for obtaining a visa. Although no direct involvement was established with the actual petitioner, [REDACTED] was determined to have violated immigration laws and any petitions handled by her are deemed questionable. As the alien's paid a fee in order to obtain visa's, it is determined that a violation took place.

Therefore, it is the determination of this Service that the agent attempted to commit fraud in order to gain a benefit that would not otherwise have been afforded. Therefore, the petition is hereby revoked.

The director did not indicate that any other issues influenced her decision, and the AAO finds the record to raise no other issues that relate to the director's revocation decision. Accordingly, as the director has not questioned the nature of the petitioner's proffered employment or any of the information it provided concerning the beneficiary's qualifications, the AAO will not conduct a *de novo* analysis of the duties of the proffered position or the beneficiary's qualifications to perform those duties under the regulatory framework set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A) and (C). Instead, it will focus its review on the extent to which the State Department's request to revoke the approved H-2B classification previously granted to the beneficiaries provided the director with a basis for revoking approval of the petition under the grounds at 8 C.F.R. § 214.2(h)(11)(iii)(A).

As discussed above, CIS is authorized to revoke H-2B petitions approved in error or on the basis of incorrect information. Revocation is also justified if the conditions under which CIS approved the H-2B petition have altered, either because of a change in the beneficiary's employment or because the petitioner violated the language of section 101(a)(15)(H) of the Act, 8 U.S.C. § 1101(a)(15)(H), or 8 C.F.R. §214.2(h), or the terms of the approved H-2B petition. A review of the NOIR indicates that the director revoked her approval of the

instant petition based on a request of the Consulate in Monterrey due to evidence found by the consulate. The AAO finds the State Department's request to revoke the approval was insufficient to support a revocation of the director's approval of the H-2B petition's validity under 8 C.F.R. § 214.2(h)(11)(iii)(A).

The State Department's request to revoke the previous approval, does not, in itself, satisfy any of the regulatory requirements for revocation of an H-2B petition, nor does the AAO find it to have resulted in any circumstances that would allow for revocation of the petition's validity.

In addition, the director did not comply with the notice requirements. 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 an NOIR. This document should: (1) specify the exact section or sections of 8 C.F.R. § 214.2(h)(11)(iii)(A) under which the director proposes to revoke the approved petition; (2) for each section of 8 C.F.R. § 214.2(h)(10)(iii)(A) specified as a basis for revocation, present a detailed statement of the factual grounds that justify invoking that particular section; and (3) specify the time period (of at least 30 days) allowed for the petitioner to submit to the director matters to rebut the adverse information and conclusions in the NOIR.

In the January 24, 2007 NOIR, the director stated that the proposed revocation of the petition under 8 C.F.R. § 214.2(h)(11)(iii)(A) was based on the fact that the "petition was returned to the Service from the Consulate in Monterrey with a request to revoke the previous approval due to evidence found by the Consulate." (The NOIR did not have any attachments).

The letter of January 24, 2007 language conveyed that the director intended to revoke the petition under 8 C.F.R. § 214.2(h)(11)(iii) and that the petitioner had 30 days to rebut the information in the consular officer's memorandum. However, this letter did not constitute an adequate NOIR. It did not specify the particular provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A) upon which the director proposed to act. It also failed to present a detailed statement of the factual grounds upon which the director proposed to act, and attachment of the consular officer's memorandum did not remedy this defect. Accordingly, the AAO has determined that the substantive procedural requirement of an adequate NOIR has not been met. As the issuance of an adequate NOIR is a necessary condition precedent to making a decision to revoke an approved petition, the record lacks the substantive procedural basis for the director to make a revocation decision.

For the reasons discussed above, the appeal will be sustained. Accordingly, the director's revocation decision will be withdrawn, and the petition remains approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained. The director's February 28, 2007 decision is withdrawn. The approval of the petition is not revoked.