

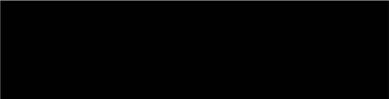


U.S. Citizenship  
and Immigration  
Services

D4



FILE: EAC 07 049 51630 Office: VERMONT SERVICE CENTER Date: **DEC 01 2009**

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:  


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.

  
Perry Rhew  
Chief, Administrative Appeals Office

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 The decision of the director will be withdrawn.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

The petitioner is an athletic training and rehabilitation center that employed the beneficiary as an athletic coach trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii) for the period from December 1, 2006 until December 1, 2008.

The record of proceeding before the AAO contains: (1) the Form I-129, dated December 11, 2006, and supporting documentation; (2) the director's notice of intent to revoke (NOIR), dated September 4, 2008, (3) the petitioner's response to the notice of intent to revoke; (4) the director's November 20, 2008 notice of revocation; and, (5) the Form I-1290B, filed on December 22, 2008. The AAO reviewed the record in its entirety before issuing its decision.

On December 11, 2006, the petitioner filed Form I-129 to employ the beneficiary in H-3 classification for the period from December 1, 2006 until December 1, 2008. The director approved the Form I-129.

On September 4, 2008, the director notified the petitioner of her intent to revoke the H-3 petition based on the following grounds: (1) that the petitioner failed to establish that the proposed training program actually exists, and does not deal in generalities with no fixed schedule, objectives, or means of evaluation; (2) that the petitioner had failed to demonstrate that the proposed training is unavailable in Russia, the beneficiary's home country; (3) that the petitioner failed to establish that the beneficiary does not already possess substantial training and expertise in the proposed field of training; and (4) that the petitioner failed to establish that it possesses physical plant space and sufficiently trained manpower to provide the training specified.

The director subsequently revoked the petition on November 20, 2008. The only issue before the AAO is whether the director appropriately revoked the H-3 petition.

The AAO now turns to the basis for the director's revocation and whether this action provided the director with grounds for revoking the H-3 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.

Pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A), a director shall issue a notice of intent to revoke an approved Form I-129 petition if he or she finds that:

(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 U. S. Citizenship and Immigration Services (USCIS) regulations on revocation.

USCIS is authorized to revoke H-3 petitions approved in error or on the basis of incorrect information. Revocation is also justified if the conditions under which USCIS approved the H-3 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-3 petition. A review of the NOIR indicates that the director revoked her approval of the instant petition based on the conclusion that the H-3 petition was approved in error. The director noted four grounds of eligibility that the petitioner failed to prove with the initial evidence. However, upon review of the record, the petitioner established that it qualified for H-3 classification on behalf of the beneficiary.

The AAO finds the director's request to revoke the approval was insufficient to support a revocation of the director's approval of the H-3 petition's validity under 8 C.F.R. § 214.2(h)(11)(iii)(A). The director's revocation did not indicate that the previously approved petition violated any of the subparts outlined in the regulations at 8 C.F.R. § 214.2(h)(11)(iii)(A). The director's decision to revoke the previous approval, does not, in itself, satisfy any of the regulatory requirements for revocation of an H-3 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 a 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.

The letter of September 4, 2008, 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 director's letter. 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. Accordingly, 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.

As a consequence of the substantive procedural defects in the director's revocation proceeding, the approval of the petition is not revoked, and the revocation proceedings are terminated, but without prejudice to the director's initiating new revocation proceedings if he deems it appropriate.

**ORDER:** The director's November 20, 2008 decision is withdrawn. The approval of the petition is not revoked. The revocation proceedings to date are terminated, but without prejudice to the director's initiating new revocation proceedings if he deems it appropriate to do so.