



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 22954295

Date: NOV. 09, 2022

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary as a “logistician” under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The petition was initially approved. The California Service Center Director subsequently revoked the approval of the petition. On appeal, the Petitioner asserts that the Director’s notice of intent to revoke (NOIR) was defective and that the Director improperly revoked the approval of the petition.

The Administrative Appeals Office reviews the questions in this matter de novo. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). It is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon de novo review, we will withdraw the Director’s decision and remand the matter to the Director.

## **I. REVOCATION FRAMEWORK**

U.S. Citizenship and Immigration Services (USCIS) regulations provide for revocation on notice after providing the Petitioner with NOIR and allows an opportunity to respond. See 8 C.F.R. § 214.2(h)(11). The Director may revoke a petition at any time, even after the expiration of the petition. 8 C.F.R. § 214.2(h)(11)(i)(B). The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A) provides five grounds for revocation of an H-1B petition:

- (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 or on the application for a temporary labor certification 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.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B) states in part:

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.

## II. ANALYSIS

The issue before us is whether the Director properly revoked the approval of the petition. Upon review, we conclude that the Director did not provide sufficient notice of the derogatory information in the NOIR in accordance with 8 C.F.R. § 214.2(h)(11)(iii)(B), and the NOIR contained incorrect statements.

In the NOIR, the Director first referenced the site visit conducted at the Petitioner's place of business at [redacted] in [redacted] Nevada. The Director stated the site inspector discovered that the business located at this address is not affiliated with the Petitioner and that the Petitioner does not seem to operate at that location. The Director also referenced another site visit that was conducted at [redacted] in [redacted] Nevada, to which the Director referred as "the address listed on the petition as the location where the petitioner would work" (emphasis added). The Director stated that during that site visit, the inspector discovered that the Petitioner "does not seem to operate at that location." The Director stated that because the Beneficiary "was not found to be working as a Logistician at the location listed on the Form I-129" and the Beneficiary "had not shown up to work at the company," the Director cannot determine if there was a bona fide position for the Beneficiary. Therefore, the Director intended to revoke the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(1) for not employing the Beneficiary in the capacity specified in the petition. However, the Petitioner had identified the Beneficiary's work location on the petition and the labor condition application (LCA) as [redacted] in [redacted] Nevada, which is not the address that the site inspector conducted the site visits. While the Director did not reference the address of the Beneficiary's work location in the NOIR, the Director appears to presume that the addresses visited by the investigators are the Beneficiary's work locations.

Further, the Director stated that the petition's approval also would be revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(4) for violating requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section because the Beneficiary "was not located at the approved work location during the

site visit,” and therefore, the Beneficiary was not engaging in services in a specialty occupation at the location. However, the Director did not explain why the Beneficiary’s absence at addresses not indicated as her work locations would constitute a violation of the Act or the regulations.

In response to the Director’s NOIR, the Petitioner reiterated that the Beneficiary’s work location is in [redacted] Nevada, according to the petition, and stated that it did not provide the addresses associated with the site visits as the Beneficiary’s work locations. The Petitioner acknowledged that it maintains its administrative office at the [redacted] location but stated that the petition makes no reference to an address located in [redacted] in [redacted] Nevada.

In the revocation notice, the Director acknowledged the Petitioner’s NOIR response but did not address them. Instead, the Director provided additional facts associated with the site visit at the Petitioner’s place of business and the signatory/co-owner’s status violations, which were not previously disclosed in the NOIR. The Director determined that the Petitioner’s signatory/co-owner did not work at the Petitioner’s place of business and may be working beyond the scope of his H-1B petition. The Director stated that these facts about the Petitioner’s signatory/co-owner “make the [P]etitioner’s claims on the Form I-129 not credible.” The Director concluded that the Petitioner does not have business operations at the [redacted] Nevada address and therefore it violated the section 101(a)(15)(H) of the Act or 8 C.F.R. § 214.2(h). However, in the NOIR, the Director did not disclose the allegations made against the Petitioner’s signatory/co-owner, therefore did not provide sufficient notice to the Petitioner for rebuttal.

Accordingly, we conclude that the Director’s NOIR contained incorrect statements regarding the Beneficiary’s work location and did not provide adequate notice to the Petitioner for rebuttal. Therefore, we will withdraw the Director’s decision to revoke the approval of the petition and will remand this case to the Director to issue a new NOIR consistent with the requirements of 8 C.F.R. § 214.2(h)(11)(iii)(B). The Director may also request any other evidence that may be deemed necessary to determine the Petitioner’s eligibility for the requested benefit.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.