

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



*Dr*

FILE: WAC 02 181 51083 Office: CALIFORNIA SERVICE CENTER Date: DEC 21 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The matter before the Administrative Appeals Office (AAO) on appeal is the service center director's revocation of approval of a nonimmigrant visa petition that the petitioner had filed on behalf of the beneficiary. The appeal will be dismissed. Approval of the petition will be revoked.

The person who had served as counsel is no longer authorized to appear as counsel in matters before Citizenship and Immigration Services. All representations by former counsel will be considered; however, he will not receive notice of these proceedings.

The subject of this appeal is the director's revocation of the approval that the service center had granted to a petition to employ the beneficiary as an accountant, 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), which pertains to temporary employment of nonimmigrant workers in positions that qualify as a specialty occupations as defined by section 101(a)(15)(H)(i)(b) the Act and its implementing regulations.

The director revoked approval of the petition based upon two general findings, namely, that the petitioner: (1) provided information in the petition that was not true and correct, and (2) violated the terms and conditions of the petition during the course of its employment of the beneficiary. The specific findings upon which the director based his two general findings are: (1) that the beneficiary "is no longer employing the beneficiary as an accountant," and (2) "has failed to compensate the beneficiary at the full proffered wage stated on the petition, or, at a minimum, failed to employ the beneficiary on a full-time basis as was stated on the petition." The director found that the evidence submitted in response to the Notice of Intent to Revoke (NOIR) "is not credible," and he also stated that "discrepancies in the petitioner's submissions have not been explained adequately."

On appeal, former counsel contends that the petitioner has established that the beneficiary's position, job duties, and responsibilities have not changed since approval of the petition. Former counsel also contends that the change in the beneficiary's salary was temporary, was caused by exigent business circumstances that were beyond the petitioner's control ("an uncontrollable downturn in [the petitioner's] operations, which fully affected [its] financial standing"), and did not violate the terms upon which the petition had been approved. In support of this contention, former counsel submits a salary adjustment letter, dated March 1, 2003, in which the petitioner assured the beneficiary of its obligation and intent to pay the portion of his salary that had been withheld due to financial conditions. Former counsel also submits a copy of the front and back portion of a \$3,840.00 check made payable to the beneficiary as "1st payment – salary adjustment," and a copy of a letter notifying the beneficiary of a \$3.00 per hour upward adjustment in his wages, as of July 1, 2004. The check is dated July 7, 2004, and the back portion of the check indicates that the check was converted by the beneficiary on September 1, 2004.

As discussed below, upon consideration of the totality of the evidence of record, including the brief on appeal and the documents accompanying it, the AAO has determined that the director's decision to revoke the approval of the petition in this case was procedurally and substantively correct. The record of proceeding, which the AAO considered in its entirety, includes (1) the petitioner's Form I-129 and supporting documentation; (2) the documentation regarding the approval of the petition; (3) the NOIR, that is, the director's notification of his intent to revoke approval of the petition; (4) the materials submitted in response to the NOIR; (5) the director's notification of his decision to revoke approval of the petition; and (5) the Form I-290B, former counsel's brief on appeal, and the documents submitted with the brief.

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.

The director complied with the notice requirements of 8 C.F.R. § 214.2(h)(11)(B), and his decision to revoke approval of the petition demonstrates that the director had considered all relevant evidence as required by this regulatory provision.

The AAO also determines that the matters submitted in response to the NOIR did not effectively rebut the grounds for revocation that were noted in the NOIR.

The AAO is not persuaded by the statements of former counsel and the petitioner that list duties that they say that the beneficiary has been performing and that aver that he has always been performing the duties of an accountant position. The statements do not address why the petitioner in an official filing with CIS described the beneficiary as working as a bookkeeper, and they are not accompanied by documentary evidence, such as copies of the beneficiary's work product, to substantiate that the beneficiary was actually performing the work that the petition had stated he would be doing. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19

I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Neither the NOIR response nor the appeal directly or effectively address the organizational chart presented in the NOIR. The record indicates that the petitioner submitted this chart in support of a separate petition filed after the petition here had been approved. Contrary to the petition in this case, which attested that the beneficiary would be employed as an accountant, the chart identifies the beneficiary, by name, as a full-charge bookkeeper, rather than an accountant. This organizational chart also depicts the accountant position as unoccupied. The page accompanying the chart states that the accountant position is vacant, and that the accountant position provides a salary of \$55,000, which is \$20,000 higher than the salary stated for the beneficiary here. That page also identifies the beneficiary by name as “full-charge bookkeeper” and describes the position as follows:

Responsible for the keeping all receipts [sic][,] journal lister[sic], monthly expenses, report to the accountant with salary annually of \$35,000[.] He is on H[-]1B visa petition.

Neither former counsel nor the petitioner presents a convincing explanation of why the petitioner submitted to CIS an organizational chart that materially contradicts the occupational information that the petitioner had presented to support the petition that is the subject of this appeal. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice; and doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of the information on this organizational chart and its accompanying page, which are indicative of the petitioner's employing the beneficiary in a non-specialty occupation that would not qualify under the regulations governing approval of H-1B petitions, the director was correct in finding that, in support of the instant petition, the petitioner had provided information that was not true and correct. Accordingly, the evidence of record supports the director's revocation of approval of the petition under 8 C.F.R. § 214.2(h)(10)(iii)(A)(2).

The evidence of record also supports the director's revocation of approval of the petition under 8 C.F.R. § 214.2(h)(10)(iii)(3), for the petitioner's having violated terms and conditions of the approved petition. Specifically, the petitioner has not presented sufficient evidence to overcome the director's determinations that the beneficiary had been paid less than the wages specified in the petition; that the beneficiary had not been employed as an accountant, the specialty occupation stated in the petition; and that the petitioner failed to abide by the requirement, stated at 8 C.F.R. § 214.2(h)(i)(11)(A), to immediately notify CIS of any changes in the terms or conditions of employment.

The evidence of record, including the matters submitted on appeal, is not sufficient to rebut the adverse information upon which the director decided to revoke approval of the petition. Accordingly, the appeal will be dismissed and approval of the petition will be revoked.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. Approval of the petition is revoked.