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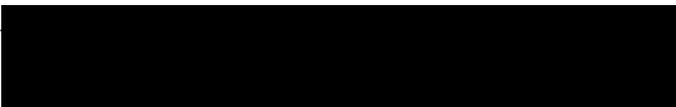


D4

FILE: EAC 03 126 54209 Office: VERMONT SERVICE CENTER

Date: AUG 16 2005

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, Director
Administrative Appeals Office

DISCUSSION: The director initially approved the nonimmigrant visa petition. After the ending validity date of the approved petition passed the director determined that the beneficiaries were no longer eligible for the benefit sought. The director, therefore, properly served the petitioner with a notice of his intent to revoke (NOIR) the approval of the petition. The director ultimately revoked the approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

In order to employ the six beneficiaries as nursery/landscape laborers for a period of nine months, the petitioner, a nursery and landscape construction firm, filed a petition to classify them as temporary nonagricultural workers 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). The director approved that petition on March 22, 2003.

The director issued a NOIR on September 14, 2004. The wording in the NOIR indicates that the director mistakenly believed that none of the beneficiaries had obtained nonimmigrant visas. According to the petitioner, the two Mexican beneficiaries did in fact obtain visas, and entered the United States. However, it is undisputed that the four Ecuadorian beneficiaries never obtained nonimmigrant visas. As such, the director properly served the petitioner with a NOIR after the ending validity date of the approved petition had passed.

The NOIR articulated the concerns of the interviewing officer and provided the petitioner 30 days during which to address these concerns. However, the petitioner did not respond, and the director revoked the approval on March 16, 2005.

On appeal, the petitioner submits a letter. In general, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intent to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). Thus, while the petitioner addresses the merits of the notice of intent to revoke in its letter, no explanation has been offered for the petitioner's failure to address these issues in a timely response to the director's notice.

If the petitioner had wanted the submitted information to be considered, it should have submitted this letter in response to the director's NOIR. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

In the record of proceeding before the director, the petitioner failed to cite any erroneous conclusion of law or statement of fact, so the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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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.