U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: WAC 07 020 50839 Office: CALIFORNIA SERVICE CENTER Date: APR 01 2009

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF BENEFICIARY:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the petition for a nonimmigrant visa. On the basis of new information received and upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of her intent to revoke the approval and subsequently ordered that the approval be revoked. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a wholesale provider of cellular and communication accessories. It seeks 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). The director approved the nonimmigrant petition on April 2, 2007.

After properly issuing a notice of intent to revoke, and after reviewing the petitioner's rebuttal to that notice, the director revoked the approval on October 17, 2007, finding that the approval of the original petition was erroneous in that the statement of facts contained in the approved petition was not true and correct. Specifically, the director found that: (1) the beneficiary was not in a valid H-1B immigrant status; (2) the petitioner did not employ the number of persons claimed on the petition; and (3) the beneficiary was not performing the duties as claimed in the position.

The record of proceeding before the AAO contains: (1) the approved Form I-129 and supporting documentation; (2) the director's notice of intent to revoke (NOIR); (3) counsel's response to the director's NOIR; (4) the director's October 17, 2007 notice of revocation; and (5) the petitioner's Form I-290B and supporting affidavit from the beneficiary. The AAO reviewed the record in its entirety before issuing its decision.

On October 24, 2006, the petitioner filed Form I-129 to employ the beneficiary and extend his status in the H-1B visa category for the period from October 17, 2006 to October 16, 2009. In support of the petition, counsel submitted a copy of the beneficiary's approval notice for H-1B employment with [redacted] with an approval period from November 1, 2003 to November 1, 2006. The director approved the Form I-129 on April 2, 2007 and extended the beneficiary's stay in H-1B status.

During an April 2006 interview, the beneficiary advised Immigration and Customs Enforcement (ICE) agents that he had been in the United States for approximately 4-5 years and had worked for a company identified as "Wireless and More" in New York City for approximately one and one half years. Noting that his claimed employment with Wireless and More contradicted the claim that he was working in valid H-1B status with [redacted] at the time the petition was filed, ICE contacted a representative at [redacted] to clarify this inconsistency. According to [redacted], the beneficiary had taken time off from [redacted] from March 13, 2006 to May 15, 2006, and that he could not hire the beneficiary back due to continued problems with the Department of Homeland Security (DHS). [redacted] concluded by stating that he did not consider the beneficiary to be an employee of [redacted]. Moreover, a request to withdraw [redacted] petition on behalf of the beneficiary (EAC 04 040 50369) on the basis that the beneficiary was no longer employed by the company, was filed on August 11, 2007.

Based on this information, the director concluded that the beneficiary did not appear to have been maintaining valid H-1B status as claimed on the petition for at least six months prior to the petition's filing. The director noted that this inconsistency, as well as inconsistent claims by the petitioner with regard to the number of persons it employed and the nature of the beneficiary's actual duties, constituted grounds for revocation of the petition's approval. Consequently, the director issued an NOIR on August 17, 2007.

The petitioner's response to the NOIR failed to overcome the bases raised by the director, and the approval of the petition was revoked on October 17, 2007. The matter is now before the AAO on appeal, and the appeal consists of an affidavit by the beneficiary denying the findings of the director.

The issue before the AAO is whether the director appropriately revoked the approval of the H-1B petition.

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:

(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.

In her August 17, 2007 NOIR, the director stated that the proposed revocation of the petition was based on the petitioner's failure to provide a true and correct statement of facts in the petition, as required by 8 C.F.R. § 214.2(h)(11)(iii)(A).

As discussed above, USCIS is authorized to revoke H-1B petitions approved in error or on the basis of incorrect information. Revocation is also justified if the conditions under which USCIS approved the H-1B 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-1B petition. A review of the NOIR indicates that the director revoked her approval of the instant petition based on her determination that the petitioner had provided false statements in the petition with regard to the beneficiary's claimed H-1B status at the time of filing, the number of persons it employed, and the duties the beneficiary was performing. The AAO finds the director's action in revoking the petition's approval sufficient to support a revocation of the H-1B petition's validity under 8 C.F.R. § 214.2(h)(11)(iii)(A)(*2*).

The record in this matter contains numerous inconsistencies which cast doubt upon the validity of the claims set forth in the petition. As correctly noted by the director, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the petitioner was afforded an opportunity to clarify the inconsistencies in the record in response to the NOIR, the petitioner failed to do so.

On appeal, the beneficiary submits a self-serving affidavit which essentially denies the claims set forth by the director regarding his U.S. employment history, his H-1B status, and the organizational structure of the petitioner for whom he was allegedly working as an accountant. The affidavit is accompanied by no independent evidence to support or corroborate the beneficiary's claims that he was maintaining valid H-1B status at the time of filing or that he is performing the duties of an accountant for the petitioner. Moreover, no evidence, or sufficient explanation, is submitted to clarify why the petitioner's claimed number of staff on Form I-129 differs from the actual number of employees confirmed by its payroll records. 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)).

As previously discussed, USCIS is authorized to revoke H-1B petitions approved in error or on the basis of incorrect information. The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(*2*) provides that a petition may be revoked if the statement of facts contained in the petition was not true and correct. In this matter, three distinct issues; namely, (1) the validity of the beneficiary's H-1B status; (2) the number of person employed by the petitioner; and (3) the actual duties performed by the beneficiary have been misrepresented and not clarified by objective, credible evidence. 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. at 591.

The petitioner has failed to provide any arguments or evidence on appeal that will overcome the basis for the director's revocation of the petition's approval. The AAO, therefore, finds the director's action in revoking the petition's approval sufficient to support a revocation of the H-1B petition's validity under 8 C.F.R. § 214.2(h)(11)(iii)(A)(*2*).

For the reasons discussed above, the AAO shall dismiss the appeal.

The petitioner has the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.