

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

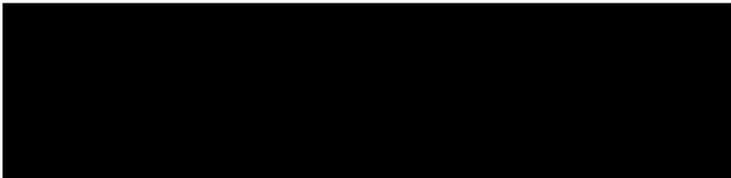
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

82



Date: **APR 25 2011** Office: CALIFORNIA SERVICE CENTER

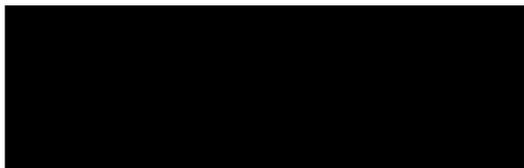
FILE: WAC 10 128 50328

IN RE: Petitioner:
Beneficiary:



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 PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved, valid until June 30, 2012.

The petitioner is a non-profit educational institution/charter school with 29 employees and approximately 177 students in grades 4 to 8 that seeks to employ the beneficiary from October 1, 2010 to September 9, 2013. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation 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 denied the petition on June 10, 2010, finding that the petitioner failed to demonstrate that there is a reasonable and credible offer of employment and that it has complied with the terms and conditions of employment. The director based her decision on discrepancies in the petitioner's documentation with respect to its gross income and number of its employees. Additionally, the director found that the petitioner failed to pay three H-1B employees, including the beneficiary, the proffered wage.

Counsel timely filed an appeal on July 8, 2010. On appeal, counsel for the petitioner asserts that USCIS did not give the petitioner an opportunity to respond to the director's findings regarding discrepancies in the documentation submitted by the petitioner. Counsel includes a letter from the petitioner explaining the discrepancies along with supporting documentation. The petitioner explains the discrepancies found by the director as follows:

- Regarding the petitioner's gross income, the amounts provided are different because one of the amounts was the estimated gross income for fiscal year July 1, 2009 to June 30, 2010, one of the amounts is the actual gross income for the prior fiscal year as stated on the petitioner's tax return, and one of the amounts was the operational income. The gross wages paid to employees differed based on whether it is the gross taxable wages amount, the gross wages paid plus benefits amount, or calendar year versus fiscal year amounts.
- For the three H-1B employees named by the director, the director only looked at Part 1 of the Form W-2 for each of these employees, which only constitutes the taxable wages of these employees and does not include deductions for days the employees did not report to work. When the lawful deductions are added to the amount in Part 1 of the Forms W-2, these employees were paid at least the proffered wages.

The AAO finds the petitioner's explanations for any discrepancies and omissions found by the director to be reasonable in light of the corroborating evidence submitted. Consequently, the petitioner has demonstrated that there is a reasonable and credible offer of employment and the petitioner is likely to comply with the terms and conditions of the beneficiary's employment. Therefore, the basis for the director's decision will be withdrawn.

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 sustained that burden. However, since the beneficiary's license expires on June 30, 2012, the petition should be approved only through that date, rather

than through September 9, 2013 as was requested in the petition. *See* 8 C.F.R. § 214.2(h)(4)(v)(E).

ORDER: The appeal is sustained. The director's decision is withdrawn, and the petition is approved, valid until June 30, 2012.