

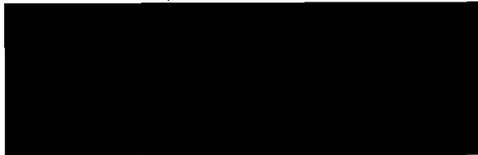
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 19 2010

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center revoked the previously approved nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner states it is a farm labor contractor, and it seeks to employ four named beneficiaries as farm workers pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(a).

On August, 1, 2009, the director revoked the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A). The director determined that the petitioner did not submit sufficient evidence in rebuttal to the USCIS' Notice of Intent to Revoke and has not overcome the grounds for revocation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, dated June 12, 2008; (2) the director's notice of intent to revoke (NOIR), dated January 29, 2009; (3) the director's August 1, 2009 notice of revocation; and (4) the Form I-1290B filed on September 3, 2009. The AAO reviewed the record in its entirety before issuing its decision.

On June 12, 2008, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ 4 named beneficiaries in the H-2A classification for the period from July 11, 2008 to December 15, 2008. The director approved the petition. On January 29, 2009, the director notified the petitioner of her intent to revoke approval of the H-2A petition. In the notice of intent to revoke, the director stated the reason for revocation as follows:

The petitioner has violated the terms and conditions of the approved petition. The Consular Officer has specific evidence that the petitioner has a history of maintaining false payroll records, is represented by an agent who is alleged to have participated in numerous H2B petition frauds, and is seeking a group of workers whose total salary would exceed its gross annual income.

In response, the petitioner stated that the Department of Labor completed an investigation on the petitioner and it determined that the petitioner had "complete and accurate payroll records." However, the petitioner did not provide any documentation of the Department of Labor's investigation and conclusion. On appeal, the petitioner submits business cards of the investigators and asks the AAO to call them. 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)).

The petitioner also stated that "to our knowledge, no allegation, charge, information or any other alleged misconduct has ever been levied against any agent associated with [the petitioner]." On appeal, the petitioner provides seven letters of authorization from the petitioner. The letters are sample letters by the petitioner that list certain agents that are authorized to work with the

petitioner. The authorization letters do not overcome the director's concern about the agents utilized by the petitioner. Again, 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. at 165.

In the Notice of Intent to Revoke, the director noted that the salaries offered to the beneficiaries could not be paid according to the petitioner's stated gross income. The petitioner explained that the gross annual income is sufficient to pay the H-2A workers; the petitioner did not, however, present any documentation to support this claim such as tax returns or sales reports. The unsupported statements of the petitioner on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). 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).

As noted by the director, the petitioner did not present sufficient evidence to overcome the revocation. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply asserting that the notice of intent to revoke is not accurate does not qualify as independent and objective evidence.

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

ORDER: The appeal is dismissed.