

(b)(6)

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



U.S. Citizenship  
and Immigration  
Services

Date: **JUL 02 2013** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiaries: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a sheep ranching business and it seeks to employ the beneficiary as a shepherd pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(a) from April 10, 2008 until April 9, 2009. The Department of Labor (DOL) determined that the petitioner had submitted sufficient evidence for the issuance of a temporary labor certification.

The director denied the petition, concluding that the petitioner did not comply with the terms and conditions of employment, and the petitioner failed to submit evidence requested by the director. The director noted that the petitioner stated it would pay the beneficiary a monthly annual income of \$750.00, but upon review of the paychecks written to the beneficiary in 2006 and 2007, the beneficiary was paid significantly less than that amount. In addition, the director noted that a request for evidence (RFE) specifically asked the petitioner to submit the beneficiary's 2006 and 2007 IRS Forms W-2, yet the petitioner failed to submit the requested information.

On appeal, the petitioner explained that the beneficiary's paycheck was less than \$750.00 because it required the beneficiary to pay half of the insurance premium. The petitioner submitted the contract with the beneficiary that stated the employee will pay half of the monthly insurance premium. In addition, the petitioner explained that it did not have to file a Form W-2 for the beneficiary and instead filed the Form 1099 which was submitted in response to the director's request for evidence.

The regulations at 20 C.F.R. § 655.715 Subpart H states that: "*Wage rate* means the remuneration (*exclusive of fringe benefits*) to be paid, stated in terms of amount per hour, day, month or year...." (Emphasis added.)

The regulation at 20 C.F.R. § 655.731(c) states the following:

(c) Satisfaction of required wage obligation.

- (1) The required wage must be paid to the employee, cash in hand, free and clear, when due, except that deductions made in accordance with paragraph (c)(9) of this section may reduce the cash wage below the level of the required wage. . . .

Thus, only deductions which are specifically authorized by 20 C.F.R. § 655.731(c)(9) may reduce the beneficiary's salary below the level of the prevailing wage. Pursuant to 20 C.F.R. § 655.731(c)(9)(ii), a contribution to a premium for health insurance policy covering all employees may be a permissible deduction. Thus, the deduction from the beneficiary's paychecks to pay the insurance policy would be permissible.

However, upon review the petitioner submitted evidence that conflicts with the claim that it deducted contributions for insurance premiums.

In response to the director's RFE that asked the petitioner to submit the beneficiary's 2006 and 2007 IRS Forms W-2 (Wage and Tax Statement), the petitioner submitted copies of IRS Form 1099-MISC (Miscellaneous Income) claiming that the beneficiary was an independent contractor. However, the AAO notes that the forms are handwritten, incomplete, and largely illegible. Additionally, the 2006 Form 1099-MISC appears to be altered to backdate the official form from 2007 to 2006, raising questions about whether the form was actually completed and issued in 2006. As such, the AAO gives this evidence reduced probative weight.

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 (BIA 1988).

Critically, both the 2006 and 2007 Forms 1099 reflect the payment of \$9,000 per year, with no deductions for contributions to a premium for the claimed health insurance policy. In other words, the Forms 1099 reflect the payment of the full \$750 per month and not the reduced amount actually represented in the cancelled checks submitted as proof of the beneficiary's salary. Furthermore, the petitioner failed to submit evidence that the beneficiary is actually covered by health insurance or paying half of the premiums, as claimed.

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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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. at 591-92.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Upon review of the submitted evidence, the AAO concludes that the petitioner has not established that it complied with the terms and conditions of employment, as originally determined by the director.

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. The petition is denied.