



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-P-Q-

DATE: FEB. 24, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a farm-labor contractor, seeks to temporarily employ the Beneficiaries as farm laborers under the H-2A nonimmigrant classification for agricultural labor or services. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(ii)(a), 8 U.S.C. § 1101(a)(15)(H)(ii)(a). Under the H-2A program, a qualified U.S. employer may bring certain foreign nationals to the United States to fill temporary or seasonal agricultural jobs for which U.S. workers are not available.

The Director, California Service Center, revoked the approval of the petition. The Director concluded that the Petitioner had violated the terms and conditions of the approved petition and also requirements of the regulations at 8 C.F.R. § 214.2(h).

The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUE

The issue before us on appeal is whether the Director was correct in revoking the approval of the instant petition.¹

II. REVOCATION

The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), *Grounds for revocation*, instructs service center directors to “send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds” one or more of the following grounds:²

¹ We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

² The record reflects that the Petitioner is not contesting the Director’s compliance with the NOIR and decision requirements in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B), which states:

Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner’s rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the

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- (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, inaccurate, fraudulent, or misrepresented a material fact; 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.

III. ANALYSIS

Based upon our independent review of the entire record of proceeding, we conclude that the Director's decision to revoke the petition was based upon a correct application of the revocation-upon-notice regulatory provisions to the facts as established by the evidence of record. In particular, we find that the evidence of record establishes that, by not ensuring that the Beneficiaries would work at the location specified in the petition, the revocation was required because the Petitioner "violated the terms and conditions of the approved petition" – the ground for revocation enumerated at 8 C.F.R. § 214.2(h)(11)(iii)(A)(3).

The Form I-129 identified [REDACTED] Georgia as the "[a]ddress where the beneficiary(ies) will work." However, the evidence of record establishes that the Beneficiaries would actually perform their services at a different location. The Notice of Intent to Revoke (NOIR) called attention to this fact, stating, in part, that "[i]t appears that the petitioner does not intend to employ H-2A workers in the manner stated in the petition" and that "[i]t is not clear where the petitioner intends to employ the workers."

The NOIR placed the Petitioner on notice the factual grounds upon which the Director intended to revoke the petition's approval. The NOIR provided information obtained from the Beneficiaries' interviews at the U.S. Consulate General, [REDACTED] Mexico, and also from a follow-up investigation by the U.S. Citizenship and Immigration Services (USCIS) Fraud Protection Unit (FPU) in [REDACTED]. Specifically, the NOIR indicated that (1) of the 73 persons who were granted visas to the United States pursuant to the Petitioner's previous H-2A petition, only 27 had actually worked for

petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

the Petitioner; (2) that FPU's investigation "revealed that many of those 73 Beneficiaries of the [previously approved petition's] visa holders are now living and working in the [United States] without authorization"; and (3) that the owner of the farm identified as the work location in the Form I-129 indicated that Beneficiaries would work at another farm owned by another individual.

In her decision revoking approval of the petition, the Director concluded, in part, that the Petitioner's response to the NOIR did not contain sufficient evidence to effectively rebut and overcome the NOIR's identification of the work-location discrepancy as a basis for the intended revocation.

On appeal, the Petitioner does not dispute the Director's finding that it appeared that the Beneficiaries of the instant petition would work at a location other than that specified in the petition. Rather, the Petitioner asserts that she had not been aware that fact until notified by USCIS. She also asserts that she had no knowledge regarding the Beneficiaries of the previously approved petition who did not report to her to work. The Petitioner states that "the errors that occurred were not my doing."³

In support, the Petitioner submits a letter describing both the processes she followed with regard to the petition and also the roles other persons played in recruiting workers for her H-2A petitions and placing them in the United States after petition approval. The Petitioner also submits a receipt from the person whom the Petitioner identifies as her agent responsible for "hiring the recruiter and getting the workers to the job site" as well as handling all aspects of the paperwork required for the petition. The appeal also includes a copy of the Farm Labor Contractor Certificate of Registration that the U.S. Department of Labor issued to the Petitioner. However, the evidence submitted does not rebut the Director's findings. We note that "it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. In that regard, we find that the Petitioner's submissions in response to the NOIR and on appeal do not contest the Director's rendition of the facts that led her to initiate and continue the revocation action.

We find that the accuracy of the work location specified in the instant petition was a material term and condition for its approval, and that the approval extended only to work at that location. Accordingly, as it appears that the Beneficiaries would not be working at that location, we affirm the Director's revocation of the petition's approval on the ground that the Petitioner has violated the terms and conditions of the approved petition.

By application of the regulation at 8 C.F.R. § 103.2(a)(1), the instructions for completing an H-1B petition are incorporated into the H-1B regulations, which are codified at paragraph (h) of 8 C.F.R. § 214.2. The instructions published by USCIS regarding Form I-129, the form used for filing H-2B

³ Alternatively, the appeal would have been summarily dismissed. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "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." Here, the Petitioner did not specifically identify any erroneous conclusion of law or statement of fact.

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petitions, require the petitioner to enter only information that is true and correct. Therefore, as the evidence establishes that the work-location information was not true and correct, by entering that information the Petitioner violated a requirement incorporated into 8 C.F.R. § 214.2(h).

IV. ADDITIONAL ISSUES

In our *de novo* review we observed two aspects of the record of proceedings which, although not addressed by the Director, would require the Director to initiate revocation-upon-notice proceedings pursuant to the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), if the Director's revocation of the instant petition's approval were set aside. This provision calls for revocation of a petition's approval if, after complying with the notice and evidence-consideration requirements at 8 C.F.R. § 214.2(h)(11)(iii)(B), the Director determines that "the statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact." The two aspects of the proceeding justifying initiation of revocation-on-notice proceedings under the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2) are:⁴

1. The Petitioner's statement at Part 3, Item 7 (at Page 14 of the Form I-129, Supplement H). There the Petitioner checked the "No" box, thereby registering a negative answer to the question: "Did you or do you plan to use a staffing, recruiting, or similar placement service or agent to locate the H-2A/H-2B workers that you intend to hire by filing this petition?" However, the Petitioner acknowledges that she had used both an agent and a recruiter to procure the services of the Beneficiaries.
2. The already discussed aspect of the Petitioner's specifying as the Beneficiaries' work address a location where it appears they would not actually work. It appears that the work address entered on the Form I-129 was "not true and correct," was "inaccurate," and also "misrepresented a material fact." Each of those characteristics would justify initiation of evocation-on-notice proceedings under the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2).

V. CONCLUSION

As the Petitioner has not effectively rebutted the Director's grounds for revocation, the appeal will be dismissed.⁵

⁴ Our decision does not address whether or not the Petitioner had violated the H-2A regulatory restrictions against direct or indirect collection of certain fees or compensation. That issue is beyond the scope of this appeal. The record of proceedings does not indicate that the Petitioner was involved in such prohibitive practices with regard to the instant petition. Rather, the record reflects that the allegation of impermissible fees refers to information developed only about the petition that had been approved prior to the instant petition. However, the Director may wish to consider initiating revocation-upon-notice proceedings with regard to the approval of the prior petition (identified in the record by the receipt number [REDACTED]).

⁵ The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases

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The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, the Petitioner identified no unique factors or issues of law to be resolved. In fact, the Petitioner set forth no specific reasons why oral argument should be held. Moreover, the written record of proceeding fully represents the facts and issues in this matter, and there is no explanation why any facts or issues in this matter, whether novel or not, have not and cannot be adequately addressed in writing. Consequently, the request for oral argument is denied.