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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

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DATE: JUL 21 2011

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner:  
Beneficiaries: 

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. Approval of the petition is revoked.

The petitioner states it is a nursery stock merchant wholesaler that seeks to employ 30 unnamed 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 January 6, 2011, the director revoked the petition. The director determined that the petitioner is not employing the beneficiaries in accordance with the terms of the temporary employment certification. The director also determined that the petitioner did not submit sufficient evidence in rebuttal to the United States Citizenship and Immigration Services' ("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 January 27, 2010; (2) the director's notice of intent to revoke (NOIR), dated September 28, 2010; (3) the petitioner's response to the NOIR; (4) the director's January 6, 2011 of revocation; and, (5) the Form I-1290B filed on February 9, 2011. The AAO reviewed the record in its entirety before issuing its decision.

On January 27, 2010, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ 30 unnamed beneficiaries in the H-2A classification for the period from January 28, 2010 until November 28, 2010. The director approved the petition. On September 28, 2010, 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:

In a memorandum dated, July 15, 2010, the United States Consulate General in Monterrey, Mexico notified USCIS that it refused to issue a visa to the beneficiaries and returned the petition for possible revocation because during the visa interview and/or in a subsequent investigation by the Department of State, information was revealed that was unknown to USCIS at the time the petition was approved. The information discovered by the Consulate also revealed that during the interview with several applicants that they have recently returned from the U.S. and that they received several visas every few months to work on the petitioner's farm in Austin, Giddings and Sanger, Texas. Moreover, there were sworn statements by beneficiaries to support these findings. The beneficiaries claimed that all the work was done at the same work site and that the work remained the same year round. Further, the beneficiaries stated that there were workers from Mexico who are working for the petitioner all year round.

In response, the petitioner submitted a letter dated October 27, 2010, and stated that the "company and its executive managers in Texas and at the corporate headquarters in Fort Lupton, Colorado, acknowledge the prior mistakes, and they are committed to full compliance in the future." The petitioner also stated that, "to the best of the Company's knowledge, no H-2A

worker remained in the country for a full year at any Company farm.” The petitioner also outlined new policies and procedures that will be adopted by the petitioner to avoid any misrepresentation or error for future H-2A filings. Moreover, the petitioner stated that the petitioner is “fully committed to compliance going forward.”

In the Notice of Revocation, the director stated, “while USCIS appreciates the petitioner’s intent to comply with regulations through operational and schedule changes, the relevant question in this revocation proceeding is whether it complied with the terms of the instant petition.” The director also noted that, “in its response to the Notice of Intent to Revoke, the petitioner admitted that it failed to comply with the terms of the instant petition, by assigning some of its workers to locations not specified on its accompanying temporary labor certification.”

On appeal, the petitioner submitted a chart of its previous H-2A filing’s from 2008 until the present for the Texas locations. The petitioner also provided a list of each H-2A worker that has worked for the petitioner, including the petition number, dates of employment, and farm location as evidence that none of the petitioner’s H-2A workers have been working all year round or had visas transferred from one farm location to another.

On appeal, the petitioner did not provide sufficient evidence to overcome the claims that H-2A workers would work in three different locations in Texas, including Austin, Giddings and Sanger, Texas. In addition, as noted by the director, the petitioner acknowledged that it made mistakes in its H-2A filings and thus, did not present sufficient evidence to establish that the current petition was filed properly. This evidence is not sufficient to overcome the director’s concerns as noted in the Notice of Intent to Revoke and the revocation decision. 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 noted by the director, the petitioner did not present sufficient evidence to overcome the revocation. For the reasons discussed above, the appeal will be dismissed. Accordingly, the director’s revocation decision will remain the same and the approval of the petition will be revoked.

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

**ORDER:** The appeal is dismissed.