

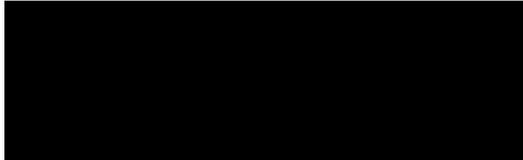
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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**



D4

DATE: **JUN 24 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE: WAC1011150819

IN RE: Petitioner: [Redacted]
 Beneficiary: [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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center revoked the previously approved nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the director's decision to revoke the petition. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be sustained and the petition will not be revoked.

The petitioner is a farm that seeks to employ 85 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 June 7, 2010, the director revoked the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A)(2). 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.

On March 15, 2010, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ 85 beneficiaries in the H-2A classification for the period from April 2, 2010 to July 22, 2010. The director approved the petition. On May 13, 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 explained that the U.S. Consulate General in Nuevo Laredo, Mexico received information that two separate companies were petitioning for H-2A workers but the beneficiaries would work at the same job site, with the same managers, and doing the same work duties. Thus, the director noted that "it is apparent that the petitioner and [REDACTED] do not operate as two independent businesses with separate seasonal needs, but in fact effectively operate as one enterprise and petition workers separately in order to circumvent the seasonal nature restriction." The director also stated that one of the petitioner's beneficiaries worked for 16 continuous months on the same job site doing the same work as both the petitioner and Onion Patch Harvesting, Inc. would file for extensions or transfers to continue his employment in H-2A status.

In a decision dated January 12, 2011, the AAO affirmed the grounds for revocation and dismissed the appeal. On February 11, 2011, counsel for the petitioner filed a Form I-290B and identified it as a Motion to Reconsider and/or a Motion to Reopen. On motion, counsel states the petitioner is providing new facts, affidavits, and documentary evidence, and seeks contends that the decision was based on an incorrect application of law and policy.

On motion, the petitioner submits an affidavit from the petitioner's president that states "H-2A workers are essential at [the petitioner] from mid October through mid August, with a peak need typically arising from mid April through mid June, depending on the season's weather." The affidavit also states that the petitioner employs approximately twenty permanent workers and has "periodically supplemented its own labor force with contract workers employed by [REDACTED]"

In addition, the documentation presented on motion includes the petitioner's 2009 and 2010 Payroll Check Register, and a graph that coincides with the information from the Payroll Check Register. The petitioner also submits a list of twenty permanent workers. According to the graph, there is a

distinct increase in employees in the months of April through July and again from October until January. In addition, the checks written in the months of April through July almost triple in number from the checks written in the other months.

The petitioner also submits a letter from [REDACTED] the County Extension Agent for Toombs County Georgia. The author acts as a "field educator for agriculture and natural resources for the University of Georgia." The author states that Vidalia onions are harvested between April and July. This information coincides with the petitioner's claim that it has a temporary need for additional workers from April through July in order to harvest the Vidalia onions.

In reviewing the new documentation submitted on motion, the petitioner has overcome the director's and AAO's concerns and has provided sufficient evidence to establish that the nature of the need is "seasonal," and the services or labor is traditionally tied to a season of the year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. 8 C.F.R. § 214.2(h)(5)(iv)(A).

Furthermore, the petitioner submits a letter from [REDACTED], the owner and sole stockholder of [REDACTED]. The author states that [REDACTED] is a separate corporation from the petitioner with "its own employees, bank accounts, employer identification number and files its own taxes." The AAO concludes that [REDACTED] is a separate and distinct company from the petitioner, each independently operating a seasonal business. The regulations do not prohibit separate companies to apply for H-2A workers for their own seasonal needs.

The petitioner presented sufficient evidence to overcome the grounds for revocation. For the reasons discussed above, the appeal will be sustained and the director's revocation decision will be withdrawn. The petition will not be revoked.

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 met that burden.

ORDER: The appeal is sustained. The approval of the petition is not revoked.