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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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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 04 2011

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:



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 partnership of farms that seeks to employ 17 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 18, 2010, the director revoked the petition. The director determined that the petitioner is not employing the beneficiaries in accordance with the temporary employment application. The director also 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, filed on February 8, 2010; (2) the director's notice of intent to revoke (NOIR), dated May 6, 2010; (3) the director's June 18, 2010 notice of revocation; and, (4) the Form I-1290B filed on July 19, 2010. The AAO reviewed the record in its entirety before issuing its decision.

On February 8, 2010, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ 17 unnamed beneficiaries in the H-2A classification for the period from March 1, 2010 to December 1, 2010. The director approved the petition. On May 6, 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:

USCIS has determined that the statement of facts contained in the petition were not true and correct. In a memorandum dated, March 31, 2010, the United States Consulate General in Nuevo Laredo notified USCIS that it refused to issue visas 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 includes the following:

During the interview at the post, several female beneficiaries stated that in the past they had worked for the petitioner. The female applicants described their duties as housekeeping, doing laundry, and at time babysitting. Following the statements made by the women, the consulate contacted two of the association owners. Both individuals verified that the statement made by the women were true and in fact, some female workers performed cleaning duties and not farm work.

In contrast to the statement made by the females and the association owners, the certified application for temporary employment was not intended for the beneficiaries to work in the duties mentioned by the women in the interview.

In response, counsel for the petitioner submitted a letter, dated May 24, 2010, and stated that only two of the applicants for the March 4, 2010 appointment at the consulate were females, one that was previously employed as an H-2A visa holder and the other was not previously employed by the petitioner. Counsel further stated that the woman who was previously employed by the petitioner worked at Arant Farms and the managing partner of that farm “denies that she did any work not on the certification and he denies that he said anything to the Counselor Official that could have been taken as an admission that he had a female clean the house, do laundry or babysit.” Counsel also stated that when the managing partner was contacted by the Consulate, the managing partner stated that “the person from the Consulate who called him did not speak English very well and did not understand the English he spoke.” In addition, counsel stated that the notice of intent to revoke stated that the Consulate spoke to “several” females but only one female that previously worked with the petitioner was interviewed on March 4, 2010.

The petitioner also submitted a letter from [REDACTED] that stated he spoke to an officer from the Consulate and “she could not speak English well enough for me to understand her thoroughly.” The letter also stated that “at no point did I ever tell her that my worker did housework, etc.”

The petitioner also submitted letters from the other farmers on the petition listing the duties that are performed by the H-2A workers when employed at their farms. The duties do not indicate that the H-2A workers perform housecleaning, laundry or babysitting.

On appeal, the petitioner requests that USCIS withdraw Carver Company from the appeal.

As noted in the Notice of Intent to Revoke, an official from the Consulate spoke to [REDACTED] and Catherine Carver and asked them questions about the duties performed by the female H-2A workers. Mr. and Mrs. [REDACTED] did not want to participate in the Response to the Notice of Intent to Revoke and on appeal, counsel for the petitioner requests the withdrawal of this one petitioner. 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)).

In addition, the petitioner submits a letter from [REDACTED] who also spoke to the consular official. The letter from [REDACTED] stated that “at no point did I ever tell her that my worker did housework, etc.” However, [REDACTED] also stated that the consular official “could not speak English well enough for me to understand her thoroughly,” and “she had some difficulty in understanding me.” This information is inconsistent because Mr. [REDACTED] stated there were communication issues; however, he describes a full conversation with the consular official

whereby he clearly stated that his H-2A workers do not do housework. 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). 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).

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. 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).

For the reasons discussed above, the appeal will be dismissed. Accordingly, the director's revocation decision will remain in effect and the petition will 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 not met that burden.

ORDER: The appeal is dismissed. The approval of the petition is revoked.