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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

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



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DATE: **MAY 09 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiaries:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

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,

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 sustained and the petition is not revoked.

The petitioner is engaged in commercial beekeeping and it seeks to employ 18 unnamed beneficiaries as beekeepers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b).

On February 9, 2011, the director revoked the petition concluding 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, dated August 31, 2010; (2) the director's notice of intent to revoke (NOIR), dated December 16, 2010; (3) the petitioner's response to the NOIR; (4) the director's February 9, 2011 notice of revocation; and (5) the Form I-1290B, filed on March 14, 2011. The AAO reviewed the record in its entirety before issuing its decision.

On August 31, 2010, the petitioner filed the Form I-129 (Petition for Nonimmigrant Worker) to employ 18 unnamed beneficiaries in the H-2B classification for the period from October 19, 2010 until June 30, 2011. The director approved the petition. On December 16, 2010, the director notified the petitioner of her intent to revoke approval of the H-2B 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 was not true and correct. In a memorandum dated, October 7, 2010, the United States Consulate General in Monterrey, Mexico notified USCIS that it refused to issue a visa to the beneficiary 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 notice of intent to revoke also provided a synopsis of the information discovered by the Consulate. The memorandum indicated that "[The petitioner] and Evergreen Honey Company, Inc. are owned by the same person, [REDACTED], operate at the same worksite in Bunkie, LA, and perform the same activities year-round." The memorandum also stated that the consulate interviewed two applicants on October 7, 2010 who stated they worked for both the petitioner and Evergreen Honey Company, Inc. and that both companies are located at the same business site and the work remained the same all year round. The notice also stated that "over the past few years, the petitioner, through the two companies, has petitioned for workers in a manner where at all times of the year they have 'temporary' workers from Mexico." The director further noted that "given the testimonials of the applicants and the information on the petitions, it appears that the petitioner is using the H2 program for year-round employment and that the nature of the employment is neither temporary nor seasonal."

In a response letter, dated January 13, 2011, the petitioner responded to the director's concerns. The petitioner outlined its seasonal need for temporary workers from September until June of each year. The petitioner explained that it has a sister company, [REDACTED] Inc. and explained the following:

Although Evergreen and [the petitioner] share owners, they are separate companies. Evergreen is incorporated separately. It has its own set of books. It has its own employees. It has its own customers and sources of revenue. While it did share a location with [the petitioner], it is now located in [REDACTED] which is approximately an hour and a half away from the previous location in [REDACTED] La. Most importantly, [REDACTED] operates on a schedule that is different from [the petitioner's].

The petitioner went on to explain that the seasonal temporary need of [REDACTED] begins in January and ends in November. The petitioner also explained the different duties performed by the employees of [REDACTED] compared to the petitioner as both companies have different clients and different business focuses. The petitioner also addressed the director's concern that two workers stated that the petitioner and [REDACTED] do the same duties and all workers work for both companies as follows:

At any given time, [the petitioner] and [REDACTED] employees will be performing different duties based on the different schedules of the two companies. As an example, the months of July and August are extremely busy for [REDACTED] but [the petitioner] sends its temporary workers home because all of [the petitioner's] bees are in the Northeast. ... Both companies understand that a worker who has a visa to work for one company is not allowed to work for another company. [The petitioner's owner] is not aware of any instance where this rule was violated and, if she were, she would take appropriate action to stop it and prevent a repetition. Moreover, even if this occurred in the past (and [she is] not aware of any instance when it has), the two workforces now work in locations that are more than 90 mile apart so it is highly unlikely that such conduct could again occur (if it ever did).

The petitioner submitted a monthly breakdown of the work duties for the petitioner and [REDACTED], which indicated that the work duties differ for each company and they have a different seasonal time period each year. The petitioner also submitted the articles of organization for the petitioner and for [REDACTED]. The petitioner was organized in [REDACTED] and [REDACTED]. [REDACTED] was incorporated in [REDACTED]. The petitioner and [REDACTED] are two separate corporate entities. In addition, the petitioner submits the customer list for the petitioner and [REDACTED], which indicates different clients for each company. Finally, the petitioner submits the employee list for the petitioner and [REDACTED], which indicates that each company employs different employees and there is no overlap of employees.

The petitioner submitted documentation evidencing that the petitioner and [REDACTED] are two separate corporate entities with different Employer Identification Numbers, and separate certificates of incorporation. In addition, the petitioner has a different seasonal need for the months of October until June of each year while [REDACTED] has a seasonal need from January until November.

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-2B workers for their own seasonal needs. In the present case, the petitioner satisfied all of the requirements for eligibility for H-2B visa status for its beekeepers.

The petitioner presented sufficient evidence to overcome the 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.