

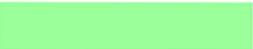
(b)(6)

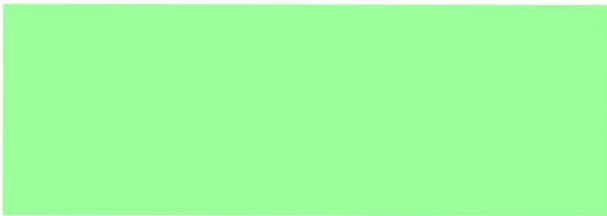
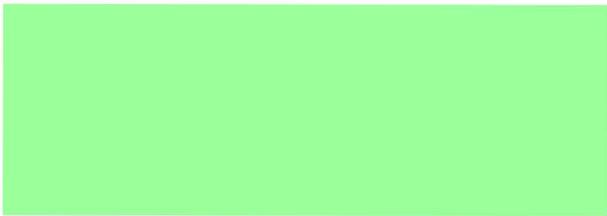
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



Date: **AUG 12 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiaries: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the approval of the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On April 16, 2012, the petitioner filed the nonimmigrant visa petition seeking classification of the beneficiaries under section 101(a)(15)(O)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(ii), as essential support aliens to an O-1 alien. The O-1 alien, [REDACTED] is a singer and entertainer granted O-1 classification for employment with the petitioner as an alien of extraordinary ability in the arts. The petitioner, a music publisher, asserts it is an agent performing the function of an employer. The petitioner seeks to employ the beneficiaries as support personnel for the musical performances of the O-1 alien for a period of at least three years.

On April 23, 2012, the director initially approved the petition. Subsequently the director received a letter dated April 19, 2012 from [REDACTED], president of the petitioner, acknowledging he received a receipt for the filing of the petition from United States Citizenship and Immigration Services (USCIS), and further stating as follows:

Please be advised that we ARE NOT the petitioner for any of [the beneficiaries].
None of these individuals are employees of our company.

Kindly review your records as I did not file this petition . . .

On September 4, 2012, the director issued a notice of intent to revoke (NOIR) the approval of the petition, based upon the petitioner's statement that it had not filed the petition on beneficiaries' behalf. The NOIR offered an opportunity for the petitioner to submit evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval of the petition. The petitioner did not submit a response to the NOIR.

On January 30, 2013, the director revoked the approval of the petition. The director stated that the petitioner failed to respond to the NOIR and that the grounds for revocation of the approval of the petition had not been overcome.

On March 5, 2013, the petitioner submitted a Notice of Appeal or Motion (Form I-290B). On the Form I-290B, where asked to provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed, counsel did not provide any statement. The petitioner checked Box B in Part 2 of the form to indicate that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, no additional evidence has been incorporated into the record of proceeding, and the record will be considered complete.

In a letter accompanying the appeal counsel stated as follows:

We recently received your notice to revoke our petition filed on April 16, 2012.

Page 3

I believe this revocation is in error. I spoke with representatives of your office in September, 2012, advising them that my letter dated April 19, 2012 was sent in error, as the paperwork we filed for the O-2 was separated from our original O-1 paperwork.

Given that my April 19, 2012 letter was sent in error, I would ask that you remove the revocation you have now processed . . .

The AAO notes that although the petitioner's letter on appeal states that the petitioner "spoke with representatives [of UCIS] in September 2012," when the NOIR was issued, the record contains no evidence in support of the petitioner's assertion, such as identification of the USCIS representatives with whom the petitioner spoke. In addition, if the petitioner had wanted the submitted evidence to be considered, it should have submitted it in response to the director's NOIR. Generally, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be adjudicated based on the record of proceeding before the director.

The director revoked the approval of the petition based on the petitioner's statement that it did not file the petition on behalf of the beneficiaries. In revoking the approval, the director observed that the petitioner did not submit a response to the NOIR.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Upon review, the AAO concurs with the director's decision and affirms the revocation of the petition approval. The petitioner's statement on appeal, without specifically identifying any errors on the part of the director, is simply insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.