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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted] **Public Copy**

File: [Redacted] Office: TEXAS SERVICE CENTER Date: **AUG 14 2001**

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

Petition: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)(A)(i)

IN BEHALF OF PETITIONER:
[Redacted]

Identifying data
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Aileen E. Crawford
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Texas Service Center. Subsequently, the beneficiary applied for adjustment of status. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke the approval of the preference visa petition. Subsequently, upon reviewing additional evidence submitted by the petitioner, the director affirmed his decision to revoke the prior approval and certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner is a company which designs and produces equipment for restaurants. It seeks to employ the beneficiary as an industrial engineer. Accordingly, the petitioner has requested classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i). The director approved the immigrant petition on September 11, 1997.

The Director, Texas Service Center, issued a notice of intent to revoke the approval on January 24, 2000. The director noted that when agents went to the site of Jean's restaurant Equipment they found no production going on as described in the I-140. In the Notice of Intent to Revoke the director stated:

When we approached Mr. Vela, we told him we were there to check on the petition filed on behalf of [REDACTED] he stated that he had submitted the petition but that [REDACTED] was not working with them. He further stated that [REDACTED] was the brother of the owner of JEAN'S RESTAURANT EQUIPMENT. He then proceeded to show us the business card of [REDACTED] which indicated that he was into a custom home construction business - [REDACTED] CONSTRUCTION of Custom Homes. It is very questionable that this business does any designing and production of restaurant equipment as alleged on the labor certificate application and the subsequent I-140.

The director noted in the Notice of Certification that the Employer's Quarterly report indicated that the beneficiary worked for [REDACTED] Inc. and earned \$1200.00 for the quarter ended April 1999.

On appeal, counsel for the petitioner submits a brief and asserts that the beneficiary was merely "moonlighting" to supplement his income and provide for his family. Counsel further argues that if the petitioner alters its business name, this is not grounds for revocation. In support of this assertion, counsel submitted a copy of a telephone directory yellow pages advertisement for Jean's Restaurant Supply, some photographs of Jean's Restaurant Equipment, a copy of a 1999 Consolidated Property Tax Statement, a copy of an

employer's Quarterly Report Continuation Sheet, and a copy of the first page of Form 941 Employer's Quarterly Federal Tax Return for [REDACTED] Restaurant Supply. Counsel urged the director to reconsider his decision to revoke the approval of the petition.

Counsel's assertion is not persuasive. The petitioner did not submit any independent objective evidence that would establish that the beneficiary was employed by the petitioner. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner did not submit any independent objective evidence that would resolve the findings of the director regarding the inconsistent representations of the beneficiary's employment. The petitioner has not submitted any evidence which would definitively rebut the assertion made by Mr. Vela when he stated that the beneficiary was not working with the petitioner.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. 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. Id. at 591.

Section 205 of the Act, 8 U.S.C. 1155, states that "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [of the Act]."

A notice of intent to revoke approval of a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. Matter of Li, 20 I&N Dec. 700, 701 (BIA 1993); Matter of Arias, supra at 569-70; Matter of Ho, supra at 590; Matter of Estime, 19 I&N Dec. 450 (BIA 1987).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The decision of the director is affirmed. The petition is revoked.