



B2

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



PUBLIC COPY

File: [Redacted] Office: VERMONT SERVICE CENTER Date:

AUG 28 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:



Identifying data deleted to 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

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Vermont 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, and his reasons therefore. After the petitioner failed to submit a timely response, the director revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary as a specialty cook. 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 June 23, 1998.

The Director, Vermont Service Center, issued a notice of intent to revoke the approval on December 7, 2000, which stated:

It has now come to the attention of the Service that you had the ability to pay the proffered wage as of September 15, 1997, the date of filing, and continually to date. The record establishes that as of July 20, 1998, the beneficiary was paid less than one half of the offered wage of \$37,440.00. According to your CPA, Barry E. Horrow, the record shows that you were paying the beneficiary \$300.00 a week in 1998. This calculates to be \$15,600.00 a year, which is short by \$21,840.00 of the amount you have indicated on the labor certification (Form ETA 750 Parts A&B).

The director determined that the petitioner did not have the ability to pay the proffered wage. After the petitioner failed to respond to the notice of intent to revoke, the director revoked the approval of the petition on February 17, 2001.

On appeal, counsel for the petitioner merely states that "[w]e can provide additional information of the employer's ability to pay the proffered wage."

No additional evidence has been received. Generally, the decision to revoke approval of an immigrant petition will be sustained, 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. Matter of Arias, 19 I&N Dec. 568, 569 (BIA 1988). For this reason, the decision of the director will be affirmed and the appeal will be dismissed.

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 appeal is dismissed.