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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]

JUN 6 2001

File: [REDACTED] Office: VERMONT SERVICE CENTER

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

Public Copy

IN BEHALF OF PETITIONER:

[REDACTED]

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

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

DISCUSSION: The preference visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the district director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately 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 permanently in the United States as a specialty cook. As required by statute, the petition was accompanied by certification from the Department of Labor.

The petition was approved on August 8, 1997. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on August 24, 2000. The revocation was based on the finding that the beneficiary did not have the required two years experience as a cook as required on the labor certification.

The director, in his revocation notice, stated in pertinent part that:

...you have submitted six affidavits regarding the employment history of the beneficiary. These affidavits are from individuals in Bangdadesh, one of whom previously submitted a statement. Also supplied was a statement from the beneficiary filed in conjunction with an I-212 (Application for Permission to Reapply for Admission into the United States after Deportation or Removal) detailing his experience with previous legal counsel. After a review of the record compiled, it has been determined that the grounds of revocation have not been overcome. The advice of previous counsel notwithstanding, when completing a Form I-589 (Application for Asylum and for Withholding of Removal) the beneficiary knowingly subscribed a false statement concerning his employment to be true. Further, when the beneficiary was questioned specifically about his profession in Bangdadesh during exclusion proceedings in New York, NY on August 18, 1995, he replied "I was a student but I used to help my father with his business." Sufficient doubt has been cast upon the reliability of the evidence offered in support of the petition. The weight of the affidavits submitted does not adequately rebut the circumstance of unreliability created by the beneficiary.

On appeal, counsel reiterates his argument that the beneficiary's previous counsel gave him poor legal advice, and states that "[b]ased on the I-212 affidavit and Mr. Lekhi's affidavit (the credibility of which have not been questioned), it is clear that the prior statements on the I-589 and in the exclusion hearing were simply incorrect, and were the result of a naive and frightened alien being manipulated with poor legal advice."

Counsel's argument is not persuasive. The fact remains that the beneficiary lied on his application and at his hearing.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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 (BIA 1988).

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the district director in his decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(3)(A)(i) of the Act and the petition may not be approved.

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 met that burden.

ORDER: The appeal is dismissed.