



U.S. Department of Justice  
Immigration and Naturalization Service

P-6

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

[REDACTED]

**PUBLIC COPY**

File: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 29 2001

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

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

IN BEHALF OF PETITIONER:  
[REDACTED]

identification 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

  
Mar C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based 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 petitioner was not eligible for the benefit sought. Accordingly, the 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 on October 26, 1999. 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 petitioner indicated that the beneficiary acquired the required experience working for [REDACTED] and for [REDACTED] Restaurant in Hong Kong. Based on an investigation by the American Embassy in Hong Kong, and after due notice to the petitioner, the approval of the petition was revoked on October 26, 1999. The revocation was based on the finding that the beneficiary was not qualified for the position as stated on the labor certification.

The director noted in the intent to revoke that:

On March 2, 1999, this Service approved the petition and it was forwarded to the consulate at Hong Kong. It has now come to the attention of this Service that the documentation submitted to establish the beneficiary's prior work experience is fraudulent.

The petitioner was afforded a period of thirty days from the date of the intent to revoke in which to offer evidence to rebut the intent to revoke. In response, the petitioner submitted two affidavits, one from the beneficiary and one allegedly from the owner of one of the restaurants where the beneficiary was purported to work.

The director found inconsistencies between the assertions of the owner of the restaurant and the beneficiary and the investigative report. The petitioner has been unable to present sufficient evidence to overcome the findings of the director in his decision to revoke the approval of the petition.

The petitioner appealed the revocation of the petition and submitted additional documentation. The petitioner claims that the investigative report does not warrant a revocation of the petition. The petitioner also submits alleged payroll records from the [REDACTED]

[REDACTED] restaurant from January 1, 1992 to December 31, 1995. However, these records do not overcome the statement by the owner of the restaurant that the petitioner never worked there. The petitioner claims that the director's decision in regards to the [REDACTED] restaurant is based on one vague conversation with the owner. However, the investigation was conducted in person; the petitioner does not deny that the owner was whom he claimed to be and has not provided adequate information to overcome the allegations made.

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.