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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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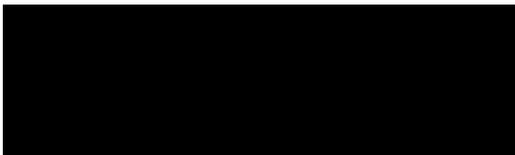
File: [Redacted] Office: VERMONT SERVICE CENTER

Date: 11 APR 2002

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:



Public Copy

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, 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 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 cook. As required by statute, the petition was accompanied by certification from the Department of Labor.

The petition was approved on October 28, 1997. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on August 4, 2000. The revocation was based on the finding that the beneficiary's letter of employment was false.

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

You have responded with a letter from [REDACTED] which gives a different description of the interview the Guayaquil investigators had with him concerning the employment of [the beneficiary]. The present letter alleges they bullied him into supporting their suspicions, and he was not the owner at the time the beneficiary worked at the restaurant. To support this claim, you submitted page 3 of a contract for buying and selling the restaurant. However, you did not submit the full contract which indicated when the first six payments were made for the restaurant and transferred ownership to [REDACTED]. You also did not address the fact that the beneficiary claimed he worked there until May 29, 1996 during the time [REDACTED] was the owner. Your response does not establish the beneficiary did work there during the period in question and, therefore, does not overcome the ground of revocation.

On appeal, counsel argues that:

The Service's revocation fundamentally misstates the evidence submitted by the Petitioner and is, at best, cursory in its consideration of the material submitted. In large part, it appears that the reasons cited in the revocation are merely a pretext to justify the Service's preexisting desire to revoke the Petition. The fact that

this revocation was issued on the day of a scheduled EOIR hearing for the Beneficiary, and served upon him during the hearing before the Immigration Judge, seriously calls into question the fairness of the administrative procedures which produced this revocation. (In-person service of revocation notices is hardly the norm for the VSC). Among the factual errors in the revocation are the following:

- 1) The revocation states that [REDACTED] letter said that he "was not the owner at the time the beneficiary worked at the restaurant"-This is erroneous. He, in fact, states that "[the beneficiary] was already working for the restaurant when I purchased the business." He merely says that he cannot confirm the date when [the beneficiary] started working at the restaurant, because he didn't own it at that time.
- 2) The revocation states that "your response does not establish the beneficiary did work there during the period in question"-However, [REDACTED]'s letter explicitly states that the Beneficiary was, in fact, working at the restaurant. The letter from the prior owner established the date that the Beneficiary had started his employment there.
- 3) The significance of "when the first six payments were made for the restaurant" is unclear, where the purchase and sale agreement is clearly dated June 21, 1995. Obviously, there could be no transfer of interest prior to the execution of a purchase and sale agreement.

The investigator, however, stated in his report that the "current owner [REDACTED] admitted that he had submitted a letter that falsely attested to the other three [REDACTED] having worked at Bar e Restaurante Do Frango." Unfortunately, the investigator did not provide a sworn statement from the current owner which corroborates this attestation. It is still incumbent upon the petitioner, however, to submit independent and objective evidence which overcomes the investigator's concerns.

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.