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U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

File: EAC 00 263 50267 Office: VERMONT SERVICE CENTER

Date: **AUG 12 2002**

IN RE: Petitioner:
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]

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 on appeal. The appeal will be sustained. The decision of the director will be withdrawn and the petition will be approved.

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 November 6, 2000. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on December 11, 2001. 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 that:

...you submit a letter issued by [REDACTED] Manageress - Managing partner supported by an "Assessment" letter dated May 15, 1997. While [REDACTED] letter provides reasonable responses to the investigating officer's concerns, the fact remains that aside from the letters you have provided that absent from the record is conclusive payroll and timekeeping evidence substantiating the beneficiary's claimed work experience.

On appeal, counsel submits payroll and timekeeping records from the Hotel Seagull for the period from May 1995 through April 1999 which establish that the beneficiary had more than two years of qualifying experience.

Upon review, the petitioner has presented sufficient evidence to overcome the findings of the district director in his decision to revoke the approval of the petition. The petitioner has established eligibility pursuant to section 203(b)(3)(A)(i) of the Act and the petition may be sustained.

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 met that burden.

ORDER: The appeal is sustained.