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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

PUBLIC  
[Redacted]

06

File: [Redacted] Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

06 DEC 2002

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)

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 The decision of the director will be withdrawn and the petition will be approved.

The petitioner is a private household. 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 July 25, 1994. Based on an investigative report, the director found that the petitioner no longer met the employment criteria of the labor certification and revoked the approval of the petition.

The director, in his revocation notice, stated in pertinent part that "the Service is not convinced the job requires a full-time cook."

On appeal, counsel for the petitioner submits a brief and additional evidence. Counsel asserts that the district director does not have direct authority to adjudicate the revocation of the I-140 approval. In addition, counsel for the petitioner maintains that the director did not have good and sufficient cause to revoke the approval.

The primary issue in this proceeding is whether the director has stated sufficient grounds to revoke the approval of the immigrant visa petition.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the

visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing Matter of Estime, 19 I&N 450 (BIA 1987)).

In order to properly revoke an immigrant petition on the basis of an investigative report, the report must have some material bearing on the grounds for eligibility for the immigrant visa classification. The investigative report must establish that the petitioner failed to meet the burden of proof on an essential element that would warrant the denial of the visa petition. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. Matter of Arias, 19 I&N Dec. 568 (BIA 1988).

In the current case, the investigative report states that the need for a full-time cook has not been established because the beneficiary prepares breakfast the night before. The report further states that the petitioner travels 30 miles each way every day to come home for lunch. In revoking the approval, the director concluded that the labor certification was invalid because the investigation determined that the beneficiary was not working full-time.

As stated in Matter of Ho, a notice of intent to revoke an approved visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. In the present case, the investigative report and the resulting notice of intent to revoke did not raise any material element that would warrant a denial of the visa petition based on the elements of the Act. The fact that the beneficiary was working and prepared breakfast the night before does not warrant the revocation of the petition approval. As long as the beneficiary and the employer maintain a bona fide intent that the latter will be employed in the job upon which the labor certification was based, and that job offer remains outstanding, the labor certification remains valid. See Pei-Chi Tien v. INS, 638 F.2d 1324, 1328 (5th Cir. 1981).

Furthermore, the director did not cite sufficient grounds to invalidate the labor certification and automatically revoke the

approval of the petition under 8 CFR 205.1. 20 CFR 656.30(d) states:

After issuance labor certification are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application.

Neither the investigative report nor the final revocation contain a finding of fraud or the wilful misrepresentation of a material fact which would warrant the invalidation of the labor certification under 20 CFR 656.30(d).

Accordingly, the notice of intent to revoke and the subsequent revocation cannot be found to have been issued for good and sufficient cause in accordance with section 205 of the Act.

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. The petitioner is approved.