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MAY 27 2004



FILE: EAC 00 001 50357 Office: VERMONT SERVICE CENTER Date:

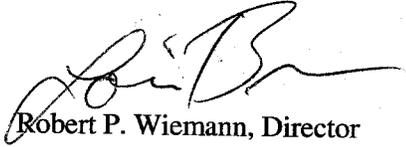
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*for*   
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the case remanded.

The petitioner is a garment manufacturer. It seeks to employ the beneficiary permanently in the United States as a sewing machine operator. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director invalidated the labor certification based upon a finding that it had been procured by fraud. The director then denied the petition because it was no longer supported by a valid labor certification.

On appeal, counsel submits a brief.

Although the director's August 12, 2002, decision advised the petitioner's counsel that an appeal was available, that information was in error. The appellate jurisdiction of the AAO is set forth at 8 C.F.R. § 103.1(f)(3)(iii) (2003). Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B). As the director invalidated the labor certification, the petition was no longer supported by a labor certification from the Department of Labor. Consequently, this office lacks jurisdiction to consider an appeal from the director's decision. However, the AAO remands the case to the director in order that he consider whether counsel's submissions and subsequent developments satisfy the requirements of a motion to reopen pursuant to 8 C.F.R. § 103.5.<sup>1</sup>

**ORDER:** The appeal is rejected and the petition is remanded to the director.

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<sup>1</sup> The AAO notes that in any additional proceedings relating to this petition, an issue may exist regarding whether Scarborough Apparel, Inc., is operating as a true successor-in-interest in accordance with the requirements set forth in *Matter of Dial Auto Repair Shop Inc.*, 19 I&N Dec. 481 (Comm. 1986). The "Sales Agreement" contained in the record specifies that the petitioner was purchasing "certain inventory and equipment" of the business, and that such items were being transferred "free and clear of all liabilities, obligations and encumbrances." In addition, in any further proceedings the director should clearly specify the evidence supporting his decision to invalidate the labor certification and he should ensure that all of the requirements of 20 C.F.R. § 656.31(d) are followed.