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U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: FEB 16 2005

SRC-00-237-52900

IN RE:

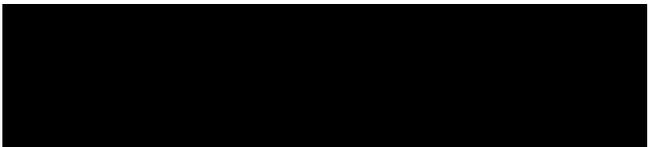
Petitioner:



Beneficiary:

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)

ON BEHALF OF PETITIONER:

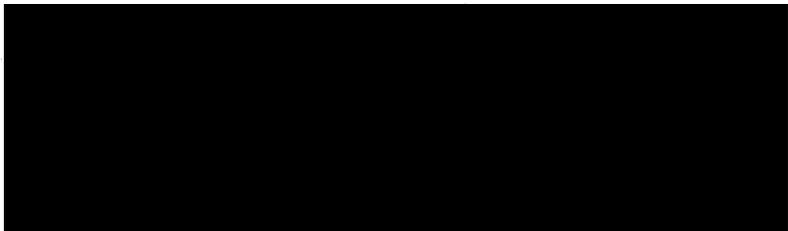


INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

CC:



DISCUSSION: The preference visa petition was approved by the Director, Texas Service Center, on June 18, 2001, and subsequently revoked on September 8, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

The petitioner is a painting company that has a gross annual income of \$3,081,446. It seeks to employ the beneficiary as a rag painter. The director revoked the approval of the petition and invalidated the underlying labor certification application for fraud based on the beneficiary's admission to submitting a fabricated employment experience letter and awareness of the false information contained in the petition at the time of filing.

The Form G-28, Entry of Appearance as Attorney or Representative, submitted in conjunction with the Form I-290B, indicates that the beneficiary retained counsel to file the appeal. Citizenship and Immigration Services' (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Although counsel states that it represents the petitioner as well as the beneficiary, no Form G-28 was submitted signed by both counsel and the petitioner's authorized representative. As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The record of proceeding contains a properly executed Form G-28 signed by the petitioner's representative and an attorney different than counsel filing the instant appeal. Since it is uncertain whether or not the petitioner obtained new counsel, a copy of this decision will be provided to the petitioner's last known counsel of record. A courtesy copy will also be provided to the beneficiary's counsel.

ORDER: The appeal is rejected as improperly filed.¹

¹ The AAO notes that the appeal would alternatively be summarily dismissed. As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel's appellate arguments discuss guilt by association. However, the director never raised such an issue. The director based her decision upon the beneficiary's own sworn testimony that evidence was fabricated in these proceedings. As counsel never addresses the issue of the beneficiary's admission of misrepresentation of a material fact (i.e., the beneficiary's qualifications for the proffered position) other than stating that the beneficiary signed blank forms that his prior attorney completed, which does not exempt him from the representations made on the forms, falsification of evidence, and fraud, counsel has failed to identify specifically an erroneous conclusion of law or statement of fact made by the director.

Additionally, the director correctly issued a notice of intent to revoke in this matter since the petitioner's prior counsel was convicted of immigration fraud. The director was within her jurisdictional duty to request additional evidence to overcome a presumption of fraud in any case in which an attorney was convicted of immigration fraud. 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)). By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

In this case, there was good and sufficient cause for the director to issue a notice of intent to revoke the petitioner's immigrant petition since the petitioner's counsel was convicted of immigration fraud. Since the petitioner did not rebut the director's findings, and in fact, only bolstered the director's findings with a response from the beneficiary conceding falsification of evidence, the director was correct in revoking the petition.