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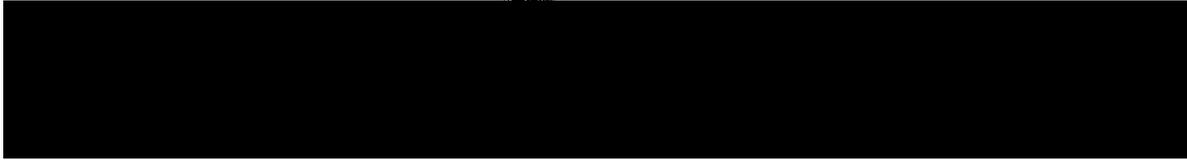
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 21 2015
WAC 00 235 57198

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)

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 F. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's final decision to revoke the petition will be withdrawn and the case will be remanded for further investigation and entry of a new decision.

The petitioner, [REDACTED] sought to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. The petitioner is a community church. It sought to employ the beneficiary permanently in the United States as an entry-level accountant. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor (DOL).

The record indicates that the Immigrant Petition for Alien Worker (I-140) was initially filed on July 24, 2000. It reveals that the beneficiary entered the United States in 1989. His labor certification application was filed in September 1995.¹ The I-140 was initially approved on September 25, 2000. The alien beneficiary filed an application to adjust his status to that of lawful permanent resident on February 16, 2001. The case was referred to the district office in San Francisco for an interview. Following a review of the information received from the interview held on November 8, 2001 relevant to the beneficiary's application to adjust to permanent resident status, the district officer referred the preference petition back to the director on July 19, 2002. The director concluded that the I-140 was approved in error and issued a notice of intent to revoke the petition on June 25, 2003. The director found that the beneficiary had no intention to accept the permanent job offer from the petitioner. The petitioner's response and subsequent submission of additional evidence failed to convince the director to revise his decision and the petition's approval was revoked on November 6, 2003, pursuant to section 205 of the Act, 8 U.S.C. § 1155.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the director's analysis did not accurately reflect the beneficiary's responses elicited at the interview or his intention to accept employment from the petitioner.

Section 205 of the Act, states: "[t]he 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."

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

¹ The address of the petitioner originally appeared as [REDACTED] on the ETA 750-A, but was amended by the DOL in November 1999 to [REDACTED]

Sections 203(b)(3) and 212(a)(5)(A) of the Act are intended to allow qualified aliens to come to the United States who can perform jobs for which sufficient United States workers are not available and for which the alien's employment will not adversely affect the wages and working conditions of workers in the United States that are similarly employed. *See also Yui Sing Tse v. INS*, 596 F. 2d 831, 834 (9th Cir. 1979). Although cases involving the intent of the petitioner to offer a permanent full-time position and the intent of the alien to accept the position offered typically arise in deportation proceedings, CIS will also examine these issues when reviewing employment-based preference petitions.

In this case, the interviewing officer at the beneficiary's adjustment interview on November 8, 2001, claimed that the alien told him that he entered the U.S. in 1989, moved to Visalia, California in 1995 and opened his own retail store named [REDACTED]. The officer further claims that "[the beneficiary] stated he still has a standing offer from the church which had petitioned for him and could work for the 'Tabernacle' church in Hawthorne, California at any time he wished although he stated to this officer that he had no intention of doing so." The interviewing officer also refers to petitioner's job offer letter, dated January 2, 2001, in which [REDACTED] states that the beneficiary has an outstanding offer for a full-time position as an accounting clerk at \$14.96 per hour.

The director referenced this information in his notice of intent to revoke the I-140 issued on June 25, 2003 and found that the petitioner had failed to establish that the beneficiary was eligible for the classification sought. An additional thirty days was afforded to the petitioner to submit evidence and/or argument in opposition to the director's notice.

In response, the petitioner, through counsel, requested another hearing and submitted an affidavit, dated July 17, 2003 from the beneficiary. Part 2 of the affidavit addresses the director's statements in the notice of intent to revoke. In opposition to the director's characterization that the beneficiary had, upon entry, moved to Visalia, California and opened a convenience store, the beneficiary states that he entered the U.S. in 1989 and "did not acquire the business until 1993." In response to the characterization that the beneficiary did not currently work for any church and has never worked for any church since his arrival in the U.S., the beneficiary states that he had "performed accounting work for the church from time to time but it was on a volunteer, non-paid basis." Finally, in opposition to the director's statement that the beneficiary still had an offer of employment from the petitioner and could work for it at any time he wished although he had no intention of doing so, the beneficiary states:

I did not state that I had no intention to (ever) work for the church. I may have stated that [I] had no intention of working for the church at the time of the interview. At the time of the interview I was working in a convenience store which I owned at that time and I did not intend to work for the church prior to obtaining permanent residence. I have since sold the store and am now working at the church full time pursuant to my work authorization document.

The director failed to find the beneficiary's response persuasive and revoked the petition on November 6, 2003. The director noted that no evidence had been submitted to substantiate the claim that the beneficiary

had moved to a commuting distance of the petitioning church rather than living approximately 200 miles away in Visalia, California. The director further observed that at the time of the interview, the beneficiary did not intend to work for the petitioner prior to obtaining permanent residence and had provided no documentation that he was working full-time for the petitioner at a certified wage of \$31,116.80 when his business had provided an annual income of \$32,000.² Finally, the director concluded that there is no evidence that the petitioner is interested in continuing the request for the beneficiary's services.

On appeal, counsel submits a letter, dated November 24, 2003, from the petitioner indicating that it is still offering a full-time permanent position as a full-time entry-level accountant to the beneficiary. Counsel also offers an additional statement, signed by the beneficiary on December 10, 2003, which is accompanied by a closing statement, dated June 25, 2003, indicating that the beneficiary sold his business in Visalia, California. This statement affirms that the beneficiary intends to work for the petitioner at the site indicated on the approved labor certification "upon being granted permanent residence, on a full-time basis." He further states that he intends to "move myself and my family to Los Angeles on or about the time I am admitted to permanent residence because where I presently live is approximately 200 of -miles away and too far to commute." The beneficiary reaffirms that at the adjustment interview he stated that he was not working for the church and did not intend to work there at that time.

In order for an offer for employment to be bona fide, the employer must have had the intent at the time the I-140 was approved, to employ the beneficiary upon adjustment. Consistent with counsel's assertion on appeal, there is no requirement in the statute or regulations that a beneficiary of an I-140 actually commences the underlying employment until permanent residence is authorized. In this case, because the intent of the beneficiary is the one at issue and may be manifested by circumstances arising after the adjudication of the I-140, it is appropriate to question the factual basis upon which the preference petition rests. It is noted that the petitioner's letter submitted on appeal continues its offer to employ the beneficiary and is consistent with its January 2001 letter. The evidence submitted on appeal also indicates that the beneficiary has sold his business in Visalia. He again asserts his intent to move to Los Angeles and to work for the petitioning business upon the authorization of permanent resident status. This is completely within the parameters permitted. What is not clear is how this statement, dated December 10, 2003, suggesting that the beneficiary has not yet begun work for the petitioner can be reconciled with paragraph 2 of the beneficiary's affidavit, dated six months earlier in July 2003, where he asserts that he is already working for the petitioner full-time. This discrepancy goes to the beneficiary's credibility and thus to his bona fide intention. Another contradiction which may be better explained by the beneficiary on remand is his representation that he has performed unpaid, volunteer accounting work for the church from time to time, but the ETA 750-B, signed by the beneficiary on May 3, 1995, indicates that he worked for [REDACTED] in New Hall, California from 1989 to 1995, forty hours per week. The record of proceeding is not clear if this is the same church that he states he has only worked for from time to time. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The AAO recognizes the lapse of time that this proceeding has been ongoing, but in order to accord it the full

² The beneficiary's individual tax return for 2000 is contained in the record supplementing the I-485.

consideration that it merits, the petition will be remanded to the director to conduct further investigation and/or another interview, if necessary in his discretion, to determine the eligibility for the visa classification requested.

In view of the foregoing, the director's final decision to revoke the petition is withdrawn and the petition is remanded to the director to conduct further investigation and request any additional evidence from the petitioner. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.