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U.S. Citizenship
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FILE: [Redacted]
EAC 01 241 51882

Office: VERMONT SERVICE CENTER

Date: SEP 30 2005

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 P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director initially approved the employment-based petition. Based on the former attorney of record's conviction in U.S. District Court in Alexandria, Virginia, for the filing of fraudulent immigrant worker visa petitions, the director first issued a notice to revoke the petition. Based on the non-response of the petitioner to the notice of intent to revoke the petition, on January 30, 2004, the director revoked the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner is a residential floor installation company. It seeks to employ the beneficiary permanently in the United States as a floor installer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not submitted sufficient evidence to overcome the proposed grounds of revocation and revoked the petition accordingly.

On appeal, counsel states that the petitioner never received the initial notice of intent to revoke the petitioner and therefore had not been given an opportunity to rebut the notice of intent to revoke. Counsel further states that if the notice of intent to revoke was based on the immigration status of the beneficiary, the beneficiary is entitled to relief under Section 245(i) of the Immigration and Naturalization Act (The Act). Counsel submits no further documentation.

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)).

On April 7, 2003, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that [REDACTED] the petitioner's attorney of record, had been convicted on December 11, 2002 of several federal offenses relating to the fraudulent procurement of immigrant labor certifications and the filing of fraudulent immigrant worker visa petitions. The director noted that as a part of his conspiracy, [REDACTED] obtained labor certifications for non-existent job offers and filed immigrant worker visa petitions without the knowledge and/or authorization of the business or individual identified as the petitioner listed on the documents, in order to acquire immigrant visas for beneficiaries who had no real intention of working for the claimed petitioner. The director further noted that in many cases the business or individual identified as the petitioner actually had no knowledge of the actions taken by [REDACTED]. Due to the size and scope of the fraud perpetrated by [REDACTED] the director stated that Citizenship and Immigration Services (CIS)

determined that it should scrutinize all visa petitions for immigrant workers in which [REDACTED] or his affiliates [REDACTED] appear as the attorney of record.

The director then cited to 8 C.F.R. § 204.5(1)(1) that references the filing of a I-140 petition by a U.S. employer, and states that a Form I-140 is not properly filed unless it is actually signed by the petitioner. The director then cites to 8 C.F.R. § 103.2(a)(2) and (7)(i). The director noted that Department of Labor regulations (DOL) also require the intending employer to sign by hand the labor certification application, and cites to 20 C.F.R. 656.21(a). The director then stated that the wide scope [REDACTED] fraud called into question whether the petitioner in the instant petition actually applied for the labor certification, and subsequently filed the Form I-140 with CIS. For this reason, the director stated, it was the intent of CIS to revoke the instant petition.

The director stated that CIS would revoke the petitioner unless the petitioner submitted to CIS a statement, accompanied by documentary evidence, to establish that the petitioner did, in fact, retain [REDACTED] or one of his associates to obtain a bona fide labor certification, relating to a bona fide job offer, and then subsequently filed a bona fide I-140. The director stated that the statement should come for a chief executive officer, president, owner, or other responsible officer or employees of the petitioner and that this person should be someone other than the person identified on the I-140 petition, namely, [REDACTED]. The statement should be signed under oath, or under penalty of perjury under United States law.

In addition, the statement should identify the signer's position and indicate whether the petitioner retained [REDACTED] firm, or one of his associates to file an application for labor certification, and/or an immigrant visa petition on behalf of the beneficiary; whether the person whose signature appears on the Form I-140 or Form ETA-750 is an officer or other person authorized to sign a document on behalf of the employers, and whether the signature is genuine. Finally the director stated that if the person who purportedly signed either the Form I-140 or the Form ETA-750 is actually an officer or employee of the petitioner, the petitioner should submit five specimens of that person's signature, so CIS may compare them with the signatures found on the I-140 petition and the Form ETA-750. The director noted that a copy of the United States Attorney news release relating to [REDACTED] conviction and sentencing was provided with the notice of intent to revoke. The director stated that CIS would not make a final decision regarding the revocation of the petition's approval for thirty days.

On January 30, 2004, the director revoked the petition. The director in the revocation notice stated that the petitioner was granted an opportunity to submit any evidence it thought would overcome the grounds of revocation, and that the record did not include a response to the director's notice. The director determined that the grounds of revocation listed in the notice of intent to revoke the petitioner had not been overcome, and the petition was revoked.

On appeal, counsel states that the petitioner has maintained continuous and active business operations at the petitioner's business located at [REDACTED] since the year 2000. Counsel states that at no time has the petitioner ever received the CIS notice of intent to revoke the petitioner. Counsel states that upon receipt of the January 30, 2004 notice of revocation, the petitioner examined its own business records and that of its beneficiary, but neither has any evidence that the CIS mailed the petitioner a notice of

intent to revoke the petition. Counsel also states that the petitioner has been attempting to obtain its client files from its attorney, but has not received any of its documents from either its former attorney or from the federal court's receiver [REDACTED]. Counsel states that in response to a request for any documents allegedly issued by CIS referring to the notice of intent to revoke, [REDACTED] indicated that his office was not in possession of the petitioner's client files, nor had his office received any such notice form CIS. Counsel provides no further evidentiary documentation to further substantiate his assertions as to communication with either [REDACTED] office or [REDACTED] office.

Counsel states that a decision to revoke approval of a visa petition should not be sustained where the notice intention to revoke was not properly issued. Counsel also states that CIS does not possess good and sufficient cause to revoke the petitioner's petition under 8 U.S.C. § 1155. Counsel states that the attorney general may, at any time, revoke approval of any petition for good and sufficient cause provided that a notice of revocation is mailed to the petitioner's last known address. Counsel states that the petitioner did not receive the CIS notice of intent to revoke the petition dated April 7, 2003 and thus, was not given any notice of derogatory evidence or the need for additional evidence. Counsel also states that CIS did not have good and sufficient cause to issue the notice of intent to revoke because the evidence in the record at the time the intent notice was issued, if unexplained or un rebutted, would not have warranted a denial of the petitioner's petition, and cites to *Matter of Estime*, Int. Dec. 3029 (BIA 1987). Counsel states that the record demonstrates that the petitioner filed a Form ETA-750 and ultimately provided an approved ETA-750, an I-140 petition and supporting documentation as to the beneficiary's qualifications for the proffered position. Counsel notes that the petitioner has a long history of business experience and revenues to support the beneficiary's wage.

Finally counsel states that if the notice of intent to revoke the petition is based on the immigration status of the beneficiary, the beneficiary is entitled to relief under Section 245(i) of the Act. Counsel notes that the beneficiary entered the United States on or about May 1998 without inspection. Counsel states that the beneficiary with respect to his adjustment of status application demonstrated that he was physically present in the U.S. on December 21, 2000. Counsel states that the petitioner submitted copies of payroll checks with regard to the beneficiary's employment with the petitioner, copies of the beneficiary's federal income tax return, and a residential deed of lease relating to his physical presence in the United States on December 21, 2000. Counsel also notes that the beneficiary submitted copies of all pages of current and expired passports to illustrate that the beneficiary was physically present in the United States on December 21, 2000.

Upon review of the record, the director's notice of intent to revoke the petition and his final decision to revoke the decision are both based on the fact that the petitioner's attorney of record was [REDACTED] an attorney convicted of visa petition fraud in December 2002. The director revoked the petition because the petitioner did not provide the required documentation outlined in the notice of intent to revoke and thus, the petitioner did not establish that the visa petition submitted by [REDACTED] was not fraudulent. The record contains no evidence that the initial notice was sent to an incorrect address, or that the petitioner had moved from the address listed on the initial petition. Furthermore, the petitioner did receive the revocation notice at the same address listed on the I-140 petition. CIS electronics records contain a notation that the Notice of Intent to Revoke was mailed to the petitioner on April 7, 2003. Also it is noted that CIS electronic records contain the petitioner's correct address. The director is well within his authority to revoke the petition based on the non-response of the petitioner. See *Matter of Estime*, *Matter of Ho*. 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 not met this burden. Therefore the director's decision will be affirmed. The appeal will be dismissed. The petition will be revoked.

ORDER: The director's decision to revoke the instant petition is affirmed. The appeal is dismissed. The petition is revoked.