

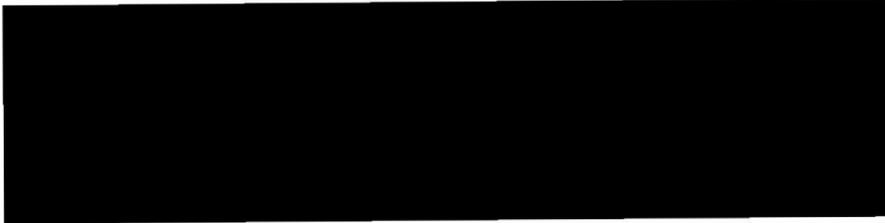
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6



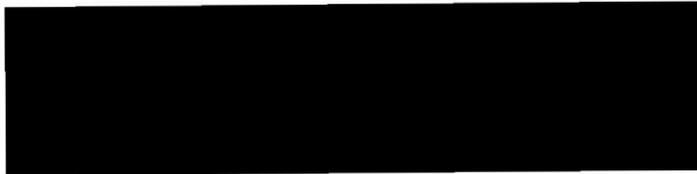
FILE: EAC 01 139 50477 Office: VERMONT SERVICE CENTER Date: **APR 11 2006**

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

DISCUSSION: The Acting Director, Vermont Service Center, revoked approval of the employment-based preference visa petition. The matter is now before the Administrative Appeals Office on appeal. The matter will be remanded.

The petitioner is a retail carpet and furniture store. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. In the decision of denial the acting director stated that the beneficiary is not qualified for the proffered position. The acting director revoked approval of the petition pursuant to section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1155.

The petition in this matter was submitted on March 26, 2001 and initially approved on August 14, 2001. A report subsequently placed in the record, produced by an official at the U.S. Embassy in Ankara, Turkey, states that in an August 28, 2002 interview under oath the beneficiary revealed that the petitioner's owner, [REDACTED], is the beneficiary's brother-in-law. That report also states that the beneficiary has been a dentist since 1975 and has no experience selling carpets or furniture. That report further states that the majority of the interview was conducted in Farsi because the beneficiary's English language skills were extremely limited. The report concludes that the beneficiary's brother-in-law offered him the position to confer immigration benefits.

The petitioner was informed of the report in a September 2, 2003 notice of intent to revoke. The petitioner was accorded 30 days to respond to that notice. That notice indicated that, if the adverse evidence were not overcome, approval of the visa petition might be revoked on the basis that the job offer was not bona fide.

In response counsel submitted a letter dated February 10, 2004. In that letter counsel stated that the beneficiary has successfully passed 12 terms of an English language course that he took to demonstrate fluency in English. Counsel further stated that the August 28, 2002 interview was conducted in Farsi, and the beneficiary had, therefore, no opportunity to properly demonstrate his proficiency in English. Counsel did not address the remaining evidence.

On July 10, 2004 the Acting Director, Vermont Service Center revoked approval of the visa petition. Rather than finding that the job offer was not bona fide, however, the acting director found that the beneficiary is not qualified for the proffered position.

The petitioner appealed, noting that the Form ETA 750 in this matter states that the proffered position requires two years in a supervisory capacity in any industry, and argues that the beneficiary has that experience by virtue of his having run a dental office.

The basis for the decision of revocation was not the same as that cited in the notice of intent to revoke. The petitioner may not have been sufficiently apprized of the basis for revocation. Further, the petitioner has, at least arguably, overcome the basis cited in the decision of revocation, as the Form ETA 750 states that the proffered position requires two years as a supervisor in any industry. The issue of whether the job offer in this case was valid, however, has never been adequately addressed.

Pursuant to 20 C.F.R. §656.20(c)(8) the petitioner has the burden when asked to show that a valid employment relationship exists and that a *bona fide* job opportunity was made available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). Although this office does not presume to prejudge this issue, it notes that a relationship between the petitioner's owner and the beneficiary casts doubt on the legitimacy of the job offer and on the assertion that the position was open to U.S. workers.¹

Further, the evidence in the record may be insufficient to demonstrate that the petitioner has the continuing ability to pay the proffered wage. On remand the director is free to consider this and all other matters pertinent to the approvability of the instant petition.

The matter will be remanded for further consideration and action.

ORDER: The matter is remanded.

¹ See *Matter of Summart*, 374, 00-INA-93 (BALCA May 15, 2000).