

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

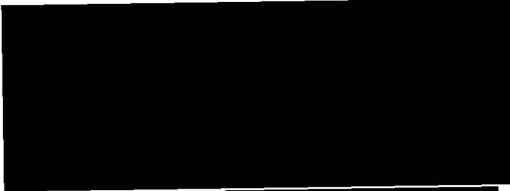
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

BC

PUBLIC COPY



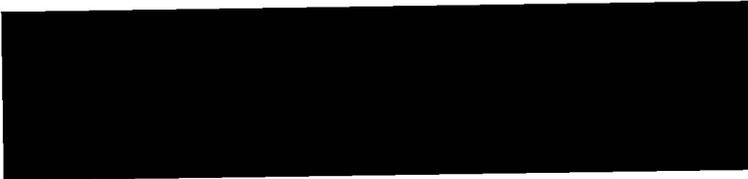
File: [Redacted]  
LIN-04-154-52061

Office: NEBRASKA SERVICE CENTER Date: DEC 26 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Director, Nebraska Service Center, (“director”) denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director in accordance with below.

The petitioner is a Chinese buffet restaurant. The petitioner seeks to employ the beneficiary permanently in the United States as a kitchen manager. As set forth in the director’s May 27, 2005 denial, the case was denied based on the petitioner’s failure to submit the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL) with the filed I-140 Petition. The decision further notes that, “there may be other deficiencies that have not been addressed that will require the submission of additional evidence. Therefore, the submission of the labor certification may not render the petition approvable.”

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a skilled worker. Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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 nature, for which qualified workers are not available in the United States.

On appeal, the petitioner has submitted the original Form ETA 750 and asserts that the petitioner has submitted documentation to show that the beneficiary is qualified. Therefore, counsel asserts that the petition should now be approved.

As the director has noted that there may be other deficiencies in the petition, we shall remand the petition to the director so that a substantive determination may be made on the merits of the case. A review of the record of proceeding suggests that the director has not raised an issue related to the beneficiary’s qualifications, which the petitioner should have the opportunity to address. The director may also update the record of proceeding with respect to the petitioner’s ability to pay.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director to adjudicate the petition on its merits. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of

---

<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The director requested the labor certification in an RFE, but did not specify a request for the original document. Although the regulations specify an original document is required and the burden of proof is on the petitioner, the AAO is exercising favorable discretion and not applying *Soriano* to the facts of this case, which thereby would preclude the acceptance of the original labor certification on appeal.

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 in accordance with the foregoing and entry of a new decision.