

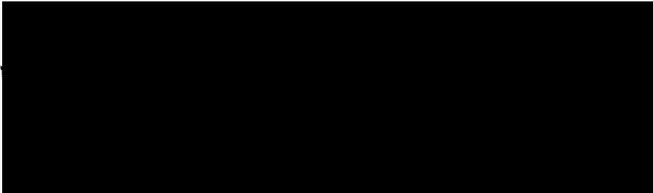


U.S. Citizenship
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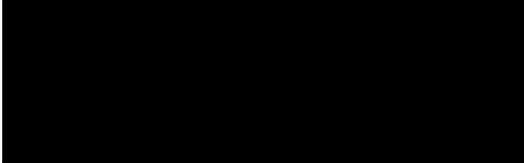
B6



FILE: EAC 03 145 52908 Office: VERMONT SERVICE CENTER Date: **JAN 19 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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied and the labor certification invalidated by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected and the labor certification will remain invalidated.

The petitioner is a corporation that raises poultry. It seeks to employ the beneficiary permanently in the United States as a poultry breeder. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition, and, that the labor certification was secured by fraud and therefore should be invalidated.

The director denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

The director invalidated the labor certification based upon a finding that it had been procured by fraud or willful misrepresentation. The director then denied the petition because it was no longer supported by a valid labor certification.

Although the director's October 30, 2003 decision advised the petitioner's counsel that an appeal was available, that information was in error. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(U) *supra* ; 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.). Authority to invalidate labor certifications is delegated to CIS by DHS Delegation Number 0150.1(X), *supra*.

Since the director invalidated the labor certification, the petition was no longer supported by a labor certification from the Department of Labor. Consequently, this office lacks jurisdiction to consider an appeal from the director's decision. However, the AAO remands the case to the director in order that he consider whether counsel's submissions satisfy the requirements of a motion to reopen pursuant to 8 C.F.R. § 103.5.

ORDER: The appeal is rejected and the petition is remanded to the director.