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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] TEXAS SERVICE CENTER Date:  
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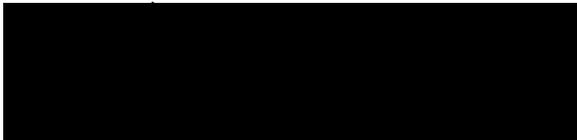
JUN 07 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director, Texas Service Center, and is now ostensibly before the Administrative Appeals Office on appeal. The appeal will be rejected.

The petitioner is a gas station/convenience store. It seeks to employ the beneficiary as a manager. The acting director determined that the petition in this matter could not be approved because the Form ETA 750 labor certification it relied upon had been used to obtain status for another beneficiary<sup>1</sup> and was no longer valid.<sup>2</sup>

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.).

Since the petition is not supported by an original labor certification from the Department of Labor, this office lacks jurisdiction to consider an appeal from the director's decision and the appeal must be rejected. 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.

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<sup>1</sup> Neither the instant record nor CIS computer records indicate that CIS has revoked the legal permanent resident status of the previous beneficiary who used the Form ETA 750 in question.

<sup>2</sup> The petition must be accompanied by an approved Form ETA 750 Application for Alien Employment Certification, by an application for Schedule A designation, or by documentation to establish that the alien qualifies for one of the shortage occupations in the Labor Market Information Pilot Program of the Department of Labor's (DOL), as required by 8 C.F.R. § 204.5(1)(3)(i). The instant case contains no indication of Schedule A eligibility or that the proffered position is listed as a shortage occupation in the DOL's Labor Market Information Pilot Program. Approval of the petition hinges, therefore, on whether the petition is supported by a valid approved Form ETA 750.