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**U.S. Citizenship
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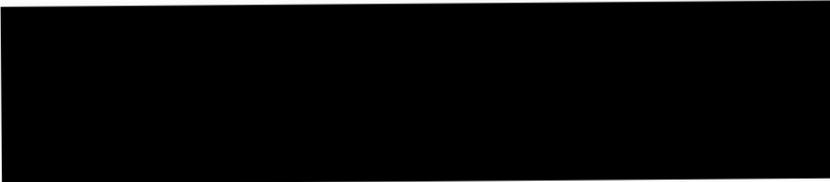
Office: VERMONT SERVICE CENTER

Date: JUL 14 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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 Director, Vermont Service Center, initially approved the employment-based preference visa petition. Subsequent to the revocation of the petitioner's attorney's license to practice law in Virginia, the director served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and remanded.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner committed fraud, and revoked the petition and invalidated the Form ETA 750 accordingly.

On appeal, counsel submits a brief and additional evidence.

Although the director's 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.