

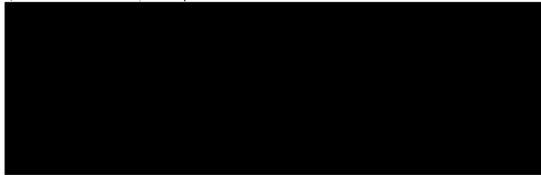
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U.S. Citizenship  
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 23 2007  
EAC 02 099 51375

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 immigrant visa petition was initially approved by the Director, Vermont Service Center. Subsequent to a conviction of immigration fraud by counsel representing the petitioner, the director issued a notice of intent to revoke the petition's approval. The director revoked the petition's approval and the matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director for entry of a new decision.

The petitioner is a construction corporation. It seeks to employ the beneficiary permanently in the United States as a construction equipment mechanic. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U. S. Department of Labor. On September 9, 2005, the director revoked the petition's approval since the petitioner did not respond to the director's notice of intent to revoke the petition's approval issued on March 24, 2005, addressed to the petitioner that elicited, among other things, a verification from the petitioner that the labor certification application was based upon a *bona fide* job offer. Since no response was received from the petitioner,<sup>1</sup> the director revoked the petition's approval accordingly.

Counsel filed a motion to reopen and reconsider with the director on September 22, 2005. That motion included an affidavit from the petitioner's owner explaining that the petitioner never received the notice of intent to revoke. The motion has not been adjudicated.

Counsel also filed the instant appeal with the AAO on September 22, 2005, with an explanatory statement. Counsel indicated on the appellate Form I-290B that he would send a brief and additional evidence within thirty (30) days. To date, the AAO has not received any additional correspondence from counsel.

Both counsel in his explanatory statement, and the petitioner in his affidavit, maintain that the petitioner never received notice of the director's request for evidence issued on March 24, 2005. The petitioner maintains that the petition and its accompanying labor certification are *bona fide*, and, that the September 9, 2005 decision to revoke the instant I-140 immigrant visa fails to provide basic and sufficient information regarding the revocation so that the petitioner can offer a response. Counsel states that the petitioner "is ready and willing to furnish sufficient information or documentation necessary to rebut [Citizenship and Immigration Services' (CIS)] findings."

We note that the beneficiary in the CIS Form G-325A signed on June 4, 2004, stated that he was employed by the petitioner since January 2000, and, that the petitioner stated in his affidavit that it is employing the beneficiary according to the terms of the labor certification.

While there is evidence in the record that the notice of intent to revoke the petition's approval dated March 24, 2005, was sent to the petitioner at its business address, counsel has introduced additional evidence on appeal.

The regulation at 8 C.F.R. § 103.5(a)(2) states in pertinent part:

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<sup>1</sup> The letter containing the request was sent to the petitioner at his address in Manassas, Virginia, and not to its original counsel [REDACTED], since Mr. [REDACTED] is on the list of disciplined practitioners as maintained by the U.S. Department of Justice, Executive Office for Immigration Review and ineligible to represent the petitioner in this matter. During the pendency of these proceedings, Mr. [REDACTED] pled guilty to multiple counts of labor and immigration fraud.

*Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The instant motion does qualify as a motion to reopen. There are new facts presented here by counsel that related to the petition, its accompanying labor certification and supporting evidence. However, the director has not adjudicated the motion and issued a substantive decision for the AAO to review. Therefore, the AAO will remand the case to the director and the director can undertake any procedural mechanisms or request any additional information or evidence necessary to make an additional determination.

**ORDER:** The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, will be certified to the AAO for review.