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U.S. Citizenship
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Services

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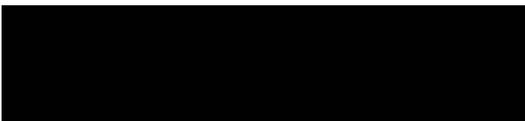


File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2007
WAC-03-092-52863

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)

IN 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 employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with the beneficiary's adjustment of status application through the Phoenix District Office, the director served the petitioner with 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 summarily dismissed.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner is a Mexican restaurant. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook pursuant to section 203(b)(3) of the Act, 8 U.S.C. § 1153(b)(3), as a skilled worker. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). Based on evidence of record and the petitioner's and the beneficiary's testimony, the director determined that the petitioner did not intend to employ the beneficiary as a full-time employee with the wage of \$9.44 per hour, as specified in the Form ETA 750, and therefore, that the evidence did not meet the requirement of full-time qualifying employment. On May 9, 2006, the director issued the NOIR granting the petitioner 30 days to rebut the grounds of revocation. On June 26, 2006, the director revoked the approval of the petition because the petitioner did not submit sufficient evidence in rebuttal to the NOIR, and thus, the director determined that the grounds for revocation had not been overcome.

On the Form I-290B, counsel indicated that he would be submitting a separate brief and/or evidence to the AAO within 30 days. The appeal was received by the California Service Center on July 7, 2006. Since the AAO has received nothing further, the AAO sent a fax to counsel on August 24, 2007 informing counsel that no separate brief and/or evidence was received, to confirm whether or not he would send anything else in this matter, and as a courtesy, providing him with five (5) days to respond. To date, more than thirteen (13) weeks later, no reply has been received.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel argues on appeal that "the petition revocation is wrong; the petitioner has been paying the prevailing wage or higher since September, 2005." However, he has not identified specifically any erroneous conclusion of law or statement of fact for the appeal and has not submitted any brief and evidence to support the appeal. Therefore, the appeal must therefore be summarily dismissed.

ORDER: The appeal is summarily dismissed. The approval of the petition remains revoked.