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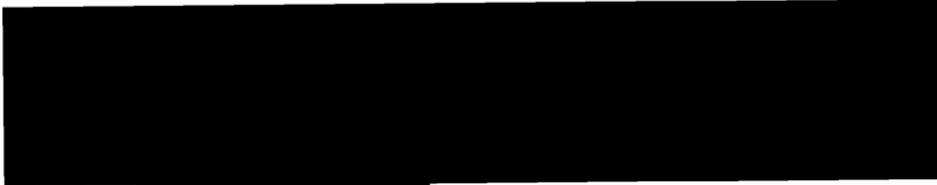
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

SRC 05 037 50669

Office: TEXAS SERVICE CENTER

Date:

JUL 02 2007

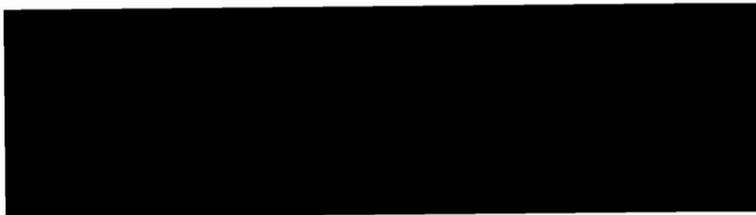
IN RE:

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 Director, Texas Service Center, revoked approval of the preference visa petition that is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The petitioner is a gas station/convenience store. It seeks to employ the beneficiary permanently in the United States as a retail store manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanied the petition. The director found 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 it had not established that the beneficiary has the requisite experience as stated on the labor certification petition. The director revoked approval of the petition for those reasons and because she determined that the petitioner failed to timely respond to a notice of intent to revoke.

The record shows that the appeal was properly and timely filed and makes a specific allegation of error in law or fact and is accompanied by new evidence. The procedural history of this case is documented in the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

One basis of the director's January 26, 2006 revocation of approval of the visa petition was that the petitioner had failed to timely respond to a December 16, 2005 notice of intent to revoke. That notice of intent to revoke noted suspicious details pertinent to the beneficiary's employment claims and verification and asked that the petitioner respond to those suspicions.

In fact, however, the petitioner did respond to the December 16, 2005 notice of intent to revoke. In an affidavit dated January 11, 2006 a paralegal at counsel's office addressed the suspicions raised in the notice of intent to revoke. A photocopy of a FedEx Airbill shows that the response was sent January 12, 2006. A printout of a tracking of that response shows that it was delivered in Garland, Texas on January 13, 2006.

That response may not have been incorporated into the record of proceedings when the director revoked approval of the visa petition in this matter. In any event, in his decision of revocation, the director did not address the response to the notice of intent to revoke.

This office expresses no opinion pertinent to the sufficiency of the petitioner's response to the notice of intent to revoke, but merely notes that it must be considered in issuing a decision. The matter will be remanded for further consideration and action. On remand the director must consider the petitioner's response and may consider any other issues material to the approvability of the petition.

Pertinent to the petitioner's continuing ability to pay the proffered wage beginning on the priority date, this office notes that the record suggests that the petitioner has multiple petitions either pending or recently pending, and that the additional petitions may influence the analysis of the petitioner's continuing ability to pay the proffered wage beginning on the priority date. The director may also request evidence salient to any

relevant issues. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded for further action and consideration.