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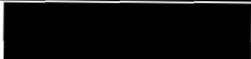


U.S. Citizenship
and Immigration
Services

B6



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JUL 13 2007**

WAC 04 032 53039

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, California Service Center, denied the visa petition. The Administrative Appeals Office (AAO) sustained an appeal and approved the petition. Subsequent to sustaining the appeal and approving the petition, the AAO received additional information that, if known at the time, would have resulted in a dismissal of the appeal and denial of the petition. Therefore, the AAO is reopening these proceedings on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The approval of the visa petition is automatically revoked, and the case will be remanded to the director to initiate rescission proceedings of the beneficiary's lawful permanent resident status.

The petitioner is a garment manufacturer. It seeks to employ the beneficiary permanently in the United States as a sample maker. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined 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 denied the petition accordingly. The AAO sustained the appeal and approved the visa petition.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Subsequent to the AAO's sustaining the appeal and approving the visa petition on June 27, 2005, the AAO discovered that the petitioner had voluntarily dissolved itself on March 28, 2005. Citizenship and Immigration Services' (CIS) records show that the beneficiary adjusted to lawful permanent resident status on September 19, 2006 based on the I-140 approval that preceded knowledge of the petitioner's termination.

The regulations at 8 C.F.R. § 205.1 states in pertinent part:

- (a) *Reasons for automatic revocation.* The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:
- (3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences or, if the beneficiary or self-petitioner is an applicant for adjustment of status to that of a permanent resident, before the decision on his or her adjustment application becomes final:
 - (iii) Petitions under section 203(b), other than special immigrant juvenile petitions.
 - (D) Upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.

Since the petitioner's business was terminated before the beneficiary obtained lawful permanent residence, the visa petition must be automatically revoked.¹

¹ Since the petitioner's business was terminated prior to the petition's approval, there was no bona fide job offer.

ORDER: The AAO's decision, dated June 27, 2005, is withdrawn and replaced with the foregoing. The approval of the visa petition is automatically revoked, and the case is remanded to the director to initiate rescission of the beneficiary's lawful permanent resident status.