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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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MAY 04 2007

FILE: [Redacted] SRC 04 023 51936

Office: TEXAS SERVICE CENTER Date:

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 employment based immigrant visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision to revoke the petition will be remanded to the director for further consideration.

The petitioner is a food service firm. It sought to employ the beneficiary permanently in the United States as a food service manager. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on October 22, 2003. It was initially approved on December 3, 2004.

The record contains a "Notice of Intent to Revoke," issued October 13, 2005. It is based upon the director's determination that the petitioner had failed to demonstrate its continuing financial ability to pay the certified wage. The director subsequently concluded that the I-140 was approved in error. On November 17, 2005, the director revoked the approval of the I-140, noting that the petitioner had elected not to respond to the Notice of Intent to Revoke.

The petitioner's counsel has timely appealed the director's decision to revoke the petition. By affidavit, he simply asserts that neither he nor the petitioner received any notice of intent to revoke from the Service Center and have not had the opportunity to respond to the grounds set forth in the notice.

Section 205 of the Act, 8 U.S.C. § 1155, states: "[t]he Secretary 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 1154 of this title."

The regulation at 8 C.F.R. § 205.2, provides in pertinent part:

- (b) *Notice of intent.* Revocation of the approval of a petition [or] self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

It is noted that the notice of intent to revoke was properly addressed to counsel at his address of record. Nevertheless, in the interests of fairness, we will remand the case to permit the petitioner an opportunity to rebut the evidence cited by the director in support of the revocation. The director may take whatever steps she deems necessary to ensure that both the petitioner and its counsel receive the new notice of intent to revoke approval of the petition. As always, the burden of proof shall remain with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**Order:** The director's decision of November 17, 2005 is withdrawn. The case will be returned to the director to issue a new notice of intent to revoke and a new decision, which if unfavorable to the petitioner shall be certified to the AAO for review.