

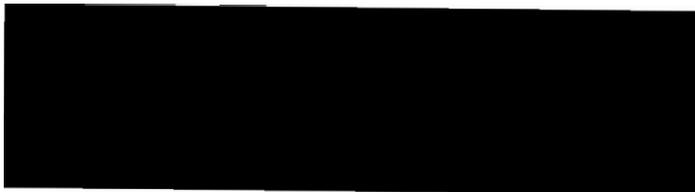
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 03 256 50011

Office: VERMONT SERVICE CENTER

NOV 15 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, Vermont Service Center, revoked approval of the instant preference visa petition that is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration.

The petitioner is a construction and design firm. It seeks to employ the beneficiary permanently in the United States as a carpenter. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL) accompanied the petition. The director denied the visa petition because I. [REDACTED] the attorney who represented the petitioner earlier in this proceeding, and Law Offices of I. [REDACTED], his law firm, pleaded guilty to one count each of a violation of 18 U.S.C. §§ 371 and 1546(a), conspiracy to commit immigration fraud, and the petitioner failed to respond to a notice of intent to revoke requesting that the petitioner affirm that counsel was authorized to file the instant petition and that it represents a *bona fide* job opportunity.

The record shows that the appeal was properly and timely filed and makes a specific allegation of error in law or fact. 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.

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 granting 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.

Section 205 of the Immigration and Nationality Act (the Act) provides, in pertinent part,

The attorney general 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. Such revocation shall be effective as of the date of approval of any such petition.

The Form I-140 visa petition in this matter was submitted on September 10, 2003. Although Part 9 of that form, the signature section, does not indicate that the visa petition was prepared for the petitioner, the corresponding Form I-485 Application to Adjust Status, submitted on the same date, shows that [REDACTED] an associate of the Law Office of I. [REDACTED] prepared it.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains a letter dated November 14, 2005 confirming a plea agreement. In it, [REDACTED] agreed to plead guilty, in both his personal capacity and as the representative of the Law Offices of I. [REDACTED] to one count of violating 18 U.S.C. §§ 371 and 1546(a), conspiracy to commit immigration fraud, a felony, in exchange for the U.S. Attorney's Office dropping the remainder of the charges against him. [REDACTED] executed that agreement on November 18, 2005.

The petition in this matter was originally approved on September 14, 2004. On May 31, 2006 the director sent the petitioner a notice of intent to revoke. In that notice the director observed that [REDACTED] had been convicted of immigration fraud. The director further stated,

Based on the scope of the malfeasance perpetrated by [REDACTED], USCIS has determined that it should scrutinize all visa petitions for immigrant workers that were filed with USCIS if [REDACTED] or his firm, appear[s] as attorney of record.

The director questioned whether the labor certification application and visa petition in this case were actually filed by or for the petitioner, and requested evidence to demonstrate that they were. The petitioner was accorded 30 days to provide a statement that the petitioner retained [REDACTED] to file for the beneficiary, that the person whose signature appears on the Form ETA 750 and Form I-140 is an officer of the petitioning company, and that his signature is genuine. The petitioner did not respond to that notice. The director revoked approval of the petition on July 20, 2006.

On appeal, counsel provided a notarized letter dated July 17, 2006, from the petitioner's owner. That letter states that the petitioner filed the subject visa petition. This office notes that the signature on that affidavit appears to match the signatures on the Form ETA 750 and the Form I-140.

That the petitioner's original attorney was convicted of immigration fraud does not create a presumption of fraud in this case. It does, however, create an articulable suspicion. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the evidence offered in support of the visa petition. Further, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

Prompted by that articulable suspicion, the director requested that the petitioner provide a letter confirming that it had authorized counsel to file the instant visa petition, and that the signature on the visa petition is genuine. Although the petitioner was accorded a reasonable time during which to respond and failed to respond, it has now submitted the requested document on appeal.

If a petitioner has been previously put on notice of a deficiency in the evidence and afforded an opportunity to cure that deficiency, this office will not accept evidence relevant to that deficiency that is offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764(BIA 1988).

In the instant case, however, the petitioner stated on appeal that he did not receive the notice of intent to revoke. A note on the file copy of the notice of intent to revoke indicates that it was not delivered, but was returned to CIS. The record appears to show that the petitioner was originally at 2420 Wilson Boulevard, Suite 100, Arlington, Virginia, but subsequently moved to Suite 101. Although the most recent address for the petitioner in the file on May 31, 2006 appears to have been Suite 101, the notice of intent to revoke was sent to Suite 100. Under these circumstances the petitioner cannot be said to have had actual notice of the contents of the notice of intent to revoke, and this office will not, under these circumstances, construe constructive notice.

The matter will be remanded so that the director may review the new evidence. On remand the director is permitted to further pursue the issue of whether the job offer in this case was *bona fide*, or any other issue pertinent to the approvability of the instant petition. The director may also request evidence pertinent to those other issues. The director shall then issue a new decision, which shall be certified to this office for review.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The petition is remanded for further consideration and action in accordance with the foregoing.