

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

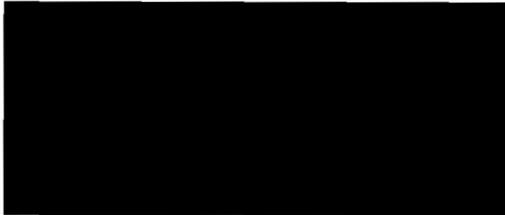
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2007
WAC 05 124 53857

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

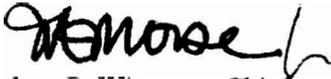
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 Director, California Service Center, denied the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and entry of a new decision.

The petitioner is a Mexican restaurant. It seeks to employ the beneficiary permanently in the United States as a restaurant cook. As required by statute, a Form ETA 750 Application for Alien Labor Certification approved by the Department of Labor (DOL) accompanied the petition. The director determined that the petitioner had not established that the beneficiary had two years qualifying experience in the proffered position as required by the Form ETA 750 as certified. Therefore, on October 5, 2005 the director denied the petition.

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.

On appeal, counsel asserts that both he and the petitioner were never sent the director's notice of denial of the Form I-140, Immigrant Petition for Alien Worker. Instead, the petitioner and counsel learned of the denial upon receipt of the director's October 5, 2005 notice which indicated that the director was denying the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, based on the denial of the petitioner's Form I-140. Counsel indicates that before he may file a meaningful appeal Citizenship and Immigration Services (CIS) needs to provide him with a copy of the Form I-140 denial notice. He states that he is going forward with the filing of the appeal, before receiving the denial, in order to preserve the petitioner's appeal rights.

The regulation at 8 C.F.R. § 103.3(a)(1)(i) provides in relevant part:

Denial of application or petition. When a [CIS] officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial.

Evidence in the record suggests that the petitioner's address is printed incorrectly on the Form I-140 denial notice such that the address on that notice is missing the petitioner's city, state and zip code.¹ Thus, it appears that in keeping with the claims made by counsel on appeal, the U.S. Postal Service would not have been able to deliver the October 5, 2005 denial notice to the petitioner. Also, the record includes the Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing counsel to represent the petitioner. The Form G-28 is properly signed by counsel and the petitioner's representative. It is dated March 23, 2005, and the record includes this form with original signatures as well as a faxed copy submitted into the record subsequent to the issuance of the Form I-140 denial notice. Counsel apparently submitted this form when he filed the Form I-140 and the Form I-485 during March 2005. This office also notes that the petitioner through counsel submitted a timely response to the director's June 14, 2005 request for evidence (RFE). In that response, counsel underscored that he was the attorney of record in this matter. He indicated that the director

¹ The city, state and zip code were handwritten into the address after the denial notice was printed. However, there is nothing in the record to indicate that this information was added before the denial notice was sent to the petitioner.

had apparently erred and had not sent him a copy of the RFE, but instead sent the RFE only to the petitioner. Counsel specifically requested that the director be certain to forward to his office a copy of all future correspondence sent to the petitioner. The director accepted counsel's submissions on behalf of the petitioner, but in his denial he did not address this request made by counsel, nor did he forward a copy of the denial to counsel.

The director's October 5, 2005 decision is withdrawn. The matter is remanded to the director that he might enter a new decision and provide a notice of decision to the petitioner and to the attorney of record which identifies any deficiencies in the petitioner's evidence that the petitioner might be able to provide a meaningful appeal. *See* 8 C.F.R. § 103.3(a)(1)(i). This office requests that the director utilize a return-receipt requested mailing procedure in this matter. Subsequent to this, the director is to certify the matter to the AAO.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision which is to be certified to the AAO for review.