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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **JUL 16 2008**
EAC 01 241 53788

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

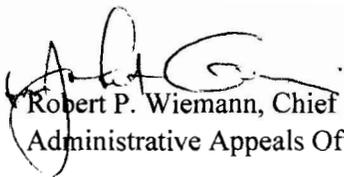
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 by the Director, Vermont 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 The director's decision to revoke the approval will be withdrawn and the case will be remanded to the director for further action.

The petitioner is a restaurant. It sought to employ the beneficiary permanently in the United States as a Head, Waitress/Waiter. As required by statute, the petition was accompanied by an individual labor certification, Form ETA 750 approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on July 23, 2001. It was initially approved on October 22, 2001.

Based on information received from the district office, the director subsequently issued a notice of intent to revoke (NOIR) the petition. It was not dated. The director advised the petitioner that the officer who had interviewed the beneficiary relevant to her Application to Register Permanent Residence or Adjust Status (Form I-485) had reason to doubt that the beneficiary intended to be employed with the petitioner upon securing her permanent residency status. The director also informed the petitioner that it had filed eighty-four petitions over the last eight years, with most filed in the last three years and that the ability to pay the proffered wage remained unresolved. The petitioner was requested to provide information related to the employer's gross and net annual income, date when the business was established and the number of employees it retained. The director noted that a copy of the investigative report was enclosed with the notice. The petitioner was afforded thirty (30) days to respond to the notice with evidence that would overcome the revocation.

On July 19, 2006, the director stated that on February 7, 2006, the petitioner was notified of the director's intent to revoke the petition's approval. She determined that as the petitioner had not submitted a response, the petition's approval was revoked.

On appeal, counsel asserts that the revocation was improper as it was not dated so offered no way to calculate a timely response. Counsel states that the NOIR had not been received at her office as of February 22, 2006. It is noted that counsel's response to the NOIR was received by the director on March 27, 2006 and placed on the non-record side of the file.

Section 205 of the Act, states: "[t]he 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."

The regulation at 8 C.F.R. § 204.5, however, provides in pertinent part:

- (b) *Notice of intent.* Revocation of the approval of a petition of [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 his opposition to the grounds alleged for revocation of the approval.

As noted by counsel on appeal, the notice was not issued with a date. Although CIS electronic records indicate that the notice of intent was accomplished on February 7, 2006, the electronic records also state that it was not sent until February 28, 2006.

In such a case, the director's intent to revoke is considered to be ineffective. As noted above, where a revocation of an approved petition is contemplated, the regulation provides that the petitioner must be given the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of its approval. To issue an undated NOIR does not provide the petitioner with a meaningful opportunity to calculate the deadline for a response, pursuant to the provisions of 8 C.F.R. § 204.5(b). As such, the director's undated attempt to revoke the I-140 on July 19, 2006 has no effect. The I-140 remains approved.

Based on the foregoing, the case will be returned to the director for issuance of a dated NOIR.

Order: The director's decision of July 19, 2006 is withdrawn. The case will be remanded to the director for further action in accordance with the above discussion.