

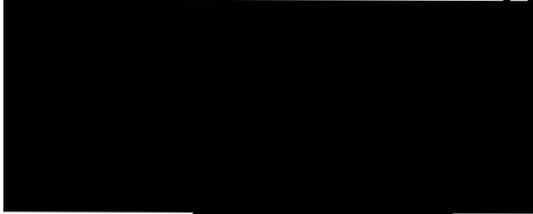
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U.S. Citizenship
and Immigration
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FILE:

[Redacted]
EAC 00 242 51902

Office: VERMONT SERVICE CENTER

Date:

JUN 26 2008

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, initially approved the preference visa petition. Subsequently, the director issued a “Final Notice to Deny Your Petition for Alien Worker.” The notice initially states that it will serve as notice of intent to revoke the approval of the petition but concludes that the decision to revoke the approval of the petition may be appealed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director’s decision and remand the matter for further action and consideration.

The petitioner is a meat products producer. It seeks to employ the beneficiary permanently in the United States as a meat processor/butcher pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director originally approved the petition. Subsequently, in an undated notice, the director determined that the petitioner had not established that the beneficiary had the intent to work in the proffered position and purported to revoke the approval of the petition.

On appeal, counsel submits a brief.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the 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 204.”

The regulation at 8 C.F.R. § 205.1(a)(iii) provides the grounds for automatic revocation for approved petitions filed pursuant to section 203(b) of the Act. The director does not claim to be revoking the approval of the instant petition on any of these grounds.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The regulation at 8 C.F.R. § 205.2, however, provides that revocation of an approval based on other than the grounds specified for automatic revocation “will be made only on notice to the petitioner or self-petitioner.” Moreover, a revocation can only be grounded upon, and the petitioner is only obliged to respond to, the factual allegations in the notice of intent to revoke. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988). The undated notice, entitled “Final Notice to Deny Your Petition for Alien Worker,” initially indicates it is a notice of intent to revoke the approval of the petition but concludes that the final revocation may be appealed to this office. It is not clear whether this notice constitutes a final decision to revoke the approval of the petition. If it does not, there is no final decision for this office to consider. If it does, it must be withdrawn as the petitioner was not previously provided notice of the director’s intent to revoke the approval of the petition and afforded a chance to respond to those proposed grounds for revocation.

Therefore, this matter will be remanded. If the director concludes that the petition was approved in error, he must properly issue a notice of intent to revoke and afford the petitioner an opportunity to respond to that notice in accordance with the regulation at 8 C.F.R. § 205.2(b). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is withdrawn; the petition is remanded to the director for issuance of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.