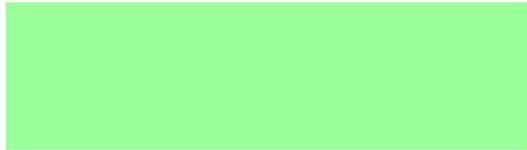




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: SEP 19 2014

OFFICE: NEBRASKA SERVICE CENTER

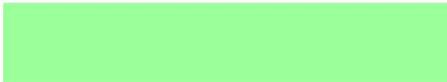
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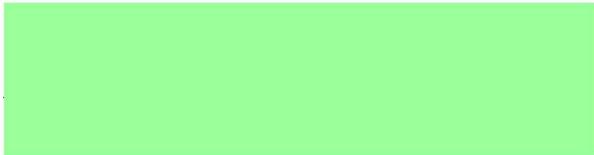
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The Director's decision will be withdrawn and the case remanded for further consideration.

The petitioner is an information technology company. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides immigrant classification to aliens of exceptional ability¹ and members of the professions holding advanced degrees or their equivalent whose services are sought by an employer in the United States.

The Form I-140, Immigrant Petition for Alien Worker, was filed on July 23, 2007. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed at the Department of Labor (DOL) on May 29, 2007, and certified by the DOL on June 1, 2007 (labor certification). Both the petition and the labor certification were signed by [REDACTED] identified as the petitioner's CEO. Counsel for the petitioner was [REDACTED], as indicated in a Form G-28, Notice of Entry of Appearance as Attorney or Representative, which accompanied the petition.

On June 11, 2012, while the instant petition was still pending, [REDACTED] located at the same address as [REDACTED] and claiming to be its successor-in-interest, filed another Form I-140 (Receipt No. [REDACTED]) signed the Form I-140 as the petitioner's CEO. Like the earlier petition, the new petition sought to employ the beneficiary as a programmer/analyst with a visa classification of advanced degree professional. A copy of the certified ETA Form 9089 that accompanied the earlier petition was submitted with the amended Form I-140. The petition was also accompanied by a new Form G-28, identifying [REDACTED] as counsel for the petitioner. The amended petition by [REDACTED] was approved on September 5, 2012.

On June 10, 2013, the Director issued a notice of his intent to deny (NOID) the instant petition filed by [REDACTED] which was mailed to the [REDACTED]. The NOID stated that publicly available sources revealed that the petitioner's president had pleaded guilty to making false statements to a government agency in connection with multiple labor certifications. As a result, the Director expressed doubts about the veracity of the petition and the labor certification filed in this case, and whether a bona fide job offer to the beneficiary exists. The Director also cited anomalies in the petitioner's federal income tax returns, found by U.S. Citizenship and Immigration Services (USCIS) in its investigation, which raised questions about the

¹ There is no indication in this case that the petitioner is requesting a visa for the beneficiary as an alien of exceptional ability.

² [REDACTED] indicated on the Form I-140 that the petition was filed to amend the previously filed petition, Receipt [REDACTED] which is the instant petition on appeal.

petitioner's continuing ability to pay the proffered wage. The petitioner was given 30 days to submit additional evidence and a written rebuttal to the adverse information discussed in the NOID.

The Nebraska Service Center received no response to the NOID. Therefore, on December 20, 2013 the Director issued a decision denying the petition. The decision was mailed to the Law Office of this time at an updated address.

The petitioner filed a timely appeal, Form I-290B, on January 17, 2014. It was accompanied by a Form G-28 signed by – the firm that represented ‘ ’ in the Form I-140 petition that was approved in 2012. In his appeal brief Mr. stated that the NOID was not received by either the counsel of record, or the petitioner. As a result, the petitioner had not received adequate notice of the evidentiary shortcomings and adverse information on which the Director's denial decision were based. The appeal brief was supported by a letter from former counsel, dated January 9, 2014, who claimed that his office never received the NOID mentioned in the denial decision, and that the decision itself was received from the Nebraska Service Center on December 23, 2013, which he then emailed to the beneficiary on the following day. According to Mr. he ceased to represent the petitioner (as well as the beneficiary) on April 27, 2012³ and advised a USCIS office in Virginia of this fact. Mr. indicated that in February 2013 his law office moved from in Los Angeles to its current address in , California. USCIS was not notified of the address change, Mr. explained, because he was no longer representing the petitioner. Also submitted with the appeal brief was an affidavit from an administrative staff person of dated January 9, 2013, who asserted that the company is the “successor-in-interest to of California,” is located at the same address on in Santa Clara, and did not receive a copy of the NOID.

The record in this case shows that the NOID issued by the Director on June 10, 2013 was mailed to former counsel, at an old address, and that no copy was sent to the petitioner. USCIS records indicate that the NOID was “returned as undeliverable” on June 26, 2013, whereupon there was an “address change” and the NOID reissued on the same day. There is no evidence in the file of the NOID issued on June 26, 2013, and to what address it was sent.

Based on the evidence of record, it is unclear whether the NOID was properly mailed to either the petitioner or current counsel at any time prior to the denial of the instant petition in December 2013. As a result, it does not appear that the petitioner had an opportunity to respond to the proposed grounds for denial before the decision was issued.

³ As previously mentioned, the record shows that the Law Offices of filed its initial Form G-28 as counsel for in June 2012.

Accordingly, the Director's decision will be withdrawn, and the case remanded for further consideration. The Director may reissue the NOID, sending it to the petitioner and counsel at their current addresses, or take any other action which may be deemed appropriate. That may include action with respect to the previously approved amended petition filed by [REDACTED] (as successor-in-interest to [REDACTED])."

ORDER: The Director's decision dated December 20, 2013, is withdrawn. The petition is remanded to the Director for further consideration in accordance with the foregoing discussion.