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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 03 144 50027

Office: VERMONT SERVICE CENTER

Date: JUN 07 2005

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the employment-based petition because the petitioner had failed to provide the original ETA 750 submitted with the initial beneficiary's I-140 petition, or a sufficient explanation for why the original document was not available. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen or reconsider. The motion will be summarily dismissed and the motion to reopen returned to the Vermont Service Center for further consideration.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook specializing in Korean and Japanese food. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, in the name of another worker, [REDACTED] accompanied the petition. The petitioner stated that it wished to substitute the beneficiary for the original beneficiary listed on the labor certification document, and that the original beneficiary had withdrawn from the initial petition.

The director in a request for further evidence requested the original ETA 750, or further information with regard to the original petition's receipt number. The petitioner stated that the current beneficiary was a substitution for the original beneficiary. The petitioner also stated that the original attorney of record for the initial petition was Mr. [REDACTED] and that due to the Mr. [REDACTED] indictment, the petitioner was unable to receive the receipt number for the initial petition. The director determined that the petitioner had not provided sufficient evidence and that Citizenship and Immigration Services was unable to determine that a prior benefit had not been obtained under the initial labor certification. The director then determined that the petitioner had not provided valid evidence of a labor certification by the Secretary of Labor or his designated representative, and that no appeal was available from the director's decision pursuant to 8 C.F.R. Section 103.1(f)(3) (iii)(B).¹ The director further added that the denial was without prejudice to the filing of a new petition submitted with the requisite labor certification.

Pursuant to 8 C.F.R. § 103.2 (b)(5) when a copy of a document is submitted with an application or petition, CIS may at any time require that the original document be submitted for review. If the requested original, other than one issued by CIS is not submitted within 12 weeks, the petition or application shall be denied or revoked. Furthermore, the same regulation states that there shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the CIS to substantiate a previously submitted copy.

In addition, with regard to motions to reopen or reconsider, 8 C.F.R. § 103.5(a)(1)(ii) states that the official having jurisdiction is the official who made the latest decision in the proceedings. In the instant petition, the official having jurisdiction is the director of the Vermont Service Center. Therefore the motion to reopen presently before the AAO is summarily dismissed. The motion to reopen will be returned to the Vermont Service Center for further consideration.

ORDER: The motion is summarily dismissed. The motion will be returned to the Vermont Service Center for further consideration.

¹ As in effect on February 28, 2003.