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U.S. Citizenship
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FILE: [Redacted]
SRC-01-034-53569

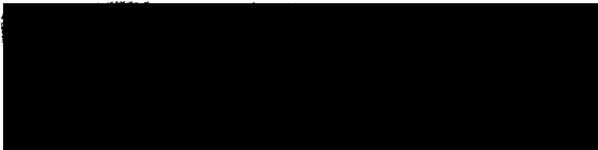
Office: TEXAS SERVICE CENTER Date:

SEP 20 2005

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

PETITION: 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 preference visa petition was initially approved by the Director, Texas Service Center. In connection with a review of all cases prepared by an attorney convicted in federal district court for filing fraudulent immigrant petitions¹, the director determined that the employment experience letter contained in the record of proceeding was fabricated². Thus, because the director made a determination of fraud or willful misrepresentation of a material fact, namely the beneficiary's qualifications for the proffered position, she provided notice of intent to revoke the approved petition to the petitioner and the petitioner's counsel of record. Since the petitioner did not timely respond to the director's notice of intent to revoke the petition, she ultimately revoked the approval of the immigrant visa petition and invalidated the underlying labor certification application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the case remanded to the director.

The petitioner is a wholesaler of copier machines. It seeks to employ the beneficiary permanently in the United States as an exporter of photocopy equipment. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

The director invalidated the labor certification based upon a finding that it had been procured by fraud or willful misrepresentation. The director then revoked the petition's approval, *inter alia*, because it was not supported by a valid labor certification.

On appeal, counsel submits a brief and additional evidence.

Although the director's decision advised the petitioner's counsel that an appeal was available, that information was in error. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).

Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.). Authority to invalidate labor certifications is delegated to Citizenship and Immigration Services (CIS) by DHS Delegation Number 0150.1(X), *supra*.

Since the director invalidated the labor certification, the petition was no longer supported by a labor certification from the Department of Labor. Consequently, this office lacks jurisdiction to consider an appeal from the director's decision. However, the AAO remands the case to the director in order that he consider whether counsel's submissions satisfy the requirements of a motion to reopen pursuant to 8 C.F.R. § 103.5.

ORDER: The appeal is rejected and the petition is remanded to the director.

¹ Convicted counsel is [REDACTED] who entered an appearance as attorney representative on behalf of the petitioner and the beneficiary in this proceeding.

² Citizenship and Immigration Services (CIS) contacted the employer listed on the letterhead of the employment experience letter who informed CIS that "the letter was never sent by me or anyone in my office, this is not my letterhead and I do not recognize the signature."