



U.S. Citizenship
and Immigration
Services

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FILE:

WAC 01 243 60332

Office: CALIFORNIA SERVICE CENTER

Date: JUL 17 2007

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, California Service Center, initially approved the immigrant visa petition. After the beneficiary's adjustment of status to lawful permanent resident status interview, the director automatically revoked the petition's approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a dentist. It seeks to employ the beneficiary permanently in the United States as dental specialist. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor. The director determined that in accordance with the regulation at 8 C.F.R. § 205.1(a)(3)(iii)(D), the approval of the petition was automatically revoked as of the date of approval because the petitioner's business had been terminated.

On appeal, counsel submits a Form I-290B, a legal brief and additional evidence. Counsel states that the director erred in his decision to revoke the petition's approval and evidence was submitted that the petition is still "approvable" due to the terms of the *American Competitiveness in the Twentifirst Century Act of 2000* (AC21) (*Public Law 106-313*).¹

The AAO has no jurisdiction over automatically revoked petition approvals under the regulation at 8 C.F.R. § 205.1(a)(3)(iii)(D) and therefore the AAO must reject the appeal.

However, under the unusual circumstances of the proceedings we find that the director should have issued a "Revocation on Notice" under the regulation at 8 C.F.R. § 205.2 and erred by automatically revoking the petition's approval. In the beneficiary's adjustment interview,² the beneficiary stated to the Citizenship and Immigration Services interviewing officer that she had worked intermittently for the petitioner because there was not enough work. The beneficiary also stated that she left the petitioner's employment due to a conflict of interest and the curtailment of her hours of employment with the petitioner. The interviewing officer also noted there appeared to be an ability to pay the proffered wage issue in light of the beneficiary's testimony.³

Based upon the above, on July 25, 2005, the director issued a notice according to the regulation at 8 C.F.R. § 205.1(a)(3)(iii)(D) automatically revoking the approval of the petition.⁴ **The director found that the petitioner's employer's business had been terminated.** We have reviewed the record of proceeding and are not able to find confirmation of that termination. On the contrary, we have accessed on May 30, 2007

¹ Counsel asserts on appeal that the petition is still "approvable" due to the terms of AC21. This consideration takes place in the context of the adjudication of an alien's application for adjustment of status and the proper venue for making such an argument is with the Citizenship and Immigration Services (CIS) official with jurisdiction over the application for adjustment.

² In order to reflect the record of proceeding (and, for what evidence the following may provide to the issues of this case relating only to the I-140 petition, its approval and subsequent revocation), the beneficiary's adjustment application interview, and the beneficiary's responses, are noted. Since this communication took place in the context of the adjudication of the alien's application for adjustment of status, the proper venue for consideration of the evidence presented is with the CIS official with jurisdiction over the application for adjustment. The AAO has no jurisdictional authority to determine or review adjustment of status matters. Further, the beneficiary has no standing in the subject proceeding relating to the issues first set forth above relating to the petitioner and its I-140 petition.

³ See the regulation at 8 C.F.R. § 204.5(g)(2).

⁴ The regulation at 8 C.F.R. § 205.1(a)(3)(iii)(D) permits automatic revocation of a petitioner's approval "[U]pon termination of the employer's business in an employment-based preference case."

information publicly available on the Internet at <http://kepler.ss.ca.gov> that indicates that the petitioner is an active corporation within the State of California, therefore the petition's approval should not have been automatically revoked. This and other documents in the record of proceeding indicate that there are factual issues still to be determined by the director in this case.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issues stated above. The director may request any additional evidence considered pertinent or if he intends to pursue revocation of the petition's approval, issue a notice pursuant to 8 C.F.R. § 205.2 providing the petitioner with opportunity to respond. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The appeal is rejected. The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.