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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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FILE:

EAC 02 083 54087

Office: VERMONT SERVICE CENTER

Date:

APR 22 2008

IN RE:

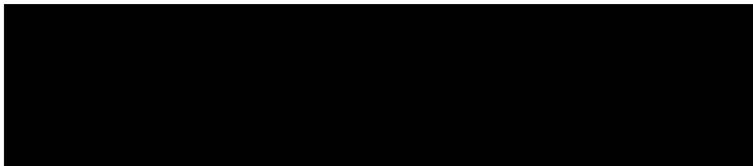
Petitioner:

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 for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the preference visa petition. In a Notice of Revocation (NOR), the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The director granted a subsequent motion to reopen/reconsider and affirmed the previous decision revoking the petition's approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The previous decision of the director will be withdrawn. The petition will be remanded to the director for entry of a new decision.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, states: "The Attorney General 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."

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

In *Matter of Estime*, . . . this Board stated that . . .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 450 (BIA 1987)). Finally, the realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Id.*

The nature of the petitioner's business is dentistry. It seeks to employ the beneficiary permanently in the United States as a dental assistant. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined based upon the recommendation and findings of the U.S. Consulate General at Montreal, Canada, and a review of the record that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with two years of qualifying employment experience. Specifically the director found that the beneficiary did not have the education, training or experience to qualify for the position of dental assistant as stated on the labor certification. The director revoked the approval of the petition accordingly. As already stated, the director granted a subsequent motion to reopen/reconsider and affirmed the previous decision revoking the petition's approval.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The regulation at 8 C.F.R. § 205.1(a)(3)(iii) provides for automatic revocation of petitions approved under section 203(b) of the Act, other than special immigrant juvenile petitions, in the following situations:

- (A) Upon invalidation pursuant to 20 CFR Part 656 of the labor certification in support of the petition.
- (B) Upon the death of the petitioner or beneficiary.

(C) Upon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of [Citizenship and Immigration Services (CIS)] who is authorized to grant or deny petitions.

(D) Upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.

Concerning revocations other than automatic revocations, the regulation at 8 C.F.R. § 205.2 states in pertinent part:

(a) General. Any [CIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of [CIS].

(b) Notice of intent. Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) Notification of revocation. If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

In the instant case, the director issued no notice of intent to revoke the prior approval of the I-140 petition. Rather, the director simply issued a decision revoking the prior approval. The reason cited by the director for this action was that the beneficiary did not meet the education, training, or experience requirements to qualify for the offered position as certified on the ETA 750 labor certification submitted with the filing. That reason is not one of the reasons listed in 8 C.F.R. § 205.1(a)(3)(iii) for automatic revocation of a petition's approval. The director failed to follow the procedure in 8 C.F.R. § 205.2(b) and issue a notice of intent to revoke. For the foregoing reason the instant case will be returned to the director, who must first issue a notice of intent to revoke, pursuant to 8 C.F.R. § 205.2(b).

**ORDER:** The previous decision of the director is withdrawn. The petition is remanded to the director for entry of a new decision which shall be then certified to the AAO for review.