U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 2 2 2010

SRC 07 800 00246

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) rejected the appeal. The AAO reopened the case and issued an intent to deny. Subsequently, the Department of Labor (DOL), Employment and Training Administration, advised the AAO that it had issued a Notice of Intent to Revoke the approval of ETA Form 9089, Application for Permanent Employment Certification (case number [redacted] filed by the petitioner on behalf of the beneficiary. The AAO notified the petitioner that its proceedings would be held in abeyance until the conclusion of the administrative proceedings before DOL in connection with that agency's Notice of Intent to Revoke certification of the petitioner's Form ETA 9089. The AAO has been advised that DOL has revoked the certification of case number [redacted]. This appeal will be dismissed.

The petitioner sought the beneficiary's classification as an employment based immigrant pursuant to section 203(b)(2) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(2) as a skilled worker.[1] The petition was accompanied by an approved Application for Permanent Employment Certification, ETA Form 9089 from the Department of Labor (DOL).

On December 5, 2006, the director denied the petition, determining that the petitioner, a sole proprietor and an alien, did not fit the definition of an "employer" under 8 C.F.R. § 204.5(c). The director also denied the petition because the petitioner did not sign the Immigrant Petition for Alien Worker, (Form I-140). The AAO initially rejected the appeal on those grounds on February 4, 2009, but reopened the matter on motion, withdrew that portion of the prior decision(s) based on an improperly executed Form I-140, and on July 21, 2009, issued a notice of intent to deny and allowed the petitioner to address the following issues: (1) the petitioner's failure to establish its continuing ability to pay the proffered wage; (2) that the job offered was and is a *bona fide* job offer as the beneficiary is related to the sole proprietor; (3) that the petitioner is a valid U.S. employer; (4) that the beneficiary has the requisite two years of qualifying employment experience; and (5) that the petitioner's job offer to the beneficiary is a realistic job offer.

Upon advisement that on September 15, 2009, DOL had issued a notice of intent to revoke certification of case number [redacted] filed by the petitioner in the instant matter, on September 18, 2009, the AAO advised the petitioner that its proceedings would be held in abeyance until the conclusion of DOL's revocation proceedings. On November 30, 2009, DOL revoked the

[1]Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

certification of the ETA Form 9089 pursuant to the regulation at 20 C.F.R. § 656.32. DOL issued a Notice of Revocation, which provides in relevant part:

> . . . The Certifying Officer (CO) reviewed the documentation submitted on October 13, 2009 by [redacted] in response to the *Notice of Intent to Revoke,* and determined that revocation remains appropriate. Specifically [redacted] owner of [redacted] was not an employer for purposes of obtaining a labor certification, making the filed application void and the granted certification unjustified. . . [2]

(Original emphasis).

In this matter, section 203(b)(3) of the Act, 8 U.S.C. § 1153(b)(3), provides immigrant classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. However, the petition must be accompanied by an individual labor certification approved by the Department of Labor. *See* 8 C.F.R. § 204.5(a)(2). Because this labor certification has been revoked, the petition is not supported by a valid labor certification, and further pursuit of the matter at hand is moot.

ORDER: The appeal is dismissed, based on DOL's revocation of certification of the ETA Form 9089, as the petition is no longer supported by a valid labor certification.

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[2] DOL noted that because [redacted] was granted withholding of removal, which does not afford him permanent status, he is, therefore, considered to be temporarily in the United States and may not be considered to be an *employer* per 20 § C.F.R. 656.26. (Original emphasis).