U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 2 3 2012 Office: NEBRASKA SERVICE CENTER FILE [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and dismissed by the Administrative Appeals Office (AAO) on appeal. The AAO subsequently reopened the matter. The appeal will be dismissed.

The petitioner seeks the beneficiary's classification as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3) as an unskilled worker.[1] The petition was accompanied by an approved Application for Permanent Employment Certification, ETA Form 9089 from the Department of Labor (DOL). The director determined that the petitioner filed the petition without all of the required initial evidence and denied the petition, accordingly.

Review of USCIS records indicates that, subsequent to the filing of the instant petition and appeal, on May 10, 2012 DOL revoked the 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:

> On March 21, 2012, the Department issued a *Notice of Intent to Revoke* (NOIR) to the employer outlining the grounds for the proposed revocation and providing the employer 30 days from receipt of the notice to submit rebuttal evidence. However, the employer did not submit any rebuttal evidence in response to the *Notice of Intent to Revoke* within the timeframe provided. Therefore, in accordance with Department's regulations at 20 C.F.R. § 656.32(b)(2), the *Notice of Intent to Revoke* issued for ETA Case Number [redacted] has become the final decision of the Secretary.

In this matter, section 203(b)(3)(A)(iii) of the Act provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal 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(k)(4). 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.

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[1] In relevant part, Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

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.