



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE:

OFFICE: TEXAS SERVICE CENTER

JAN 24 2013

IN RE:

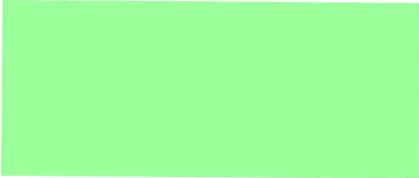
Petitioner:

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:

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.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the employment-based preference visa petition. In connection with the beneficiary's Form I-485, Application for Adjustment of Status, the Officer-in-Charge of the New York district office served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the Officer-in-Charge of the New York district office ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker. The matter was appealed to the Administrative Appeals Office (AAO). The matter will be remanded to the Texas Service Center.

The petitioner is a swimming pool manufacturer. It seeks to employ the beneficiary permanently in the United States as a roll operator/sheet metal. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the August 18, 2006 notice of revocation, the Officer-in-Charge determined that the beneficiary is ineligible for the benefit sought due to marriage fraud under section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c) and, therefore revoked the petition's approval accordingly.

Section 203(b)(3)(A)(i) of 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.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Upon review of the record, the AAO has determined that the Texas Service Center must consider any revocation of the petition's approval.<sup>1</sup> Therefore, the AAO will remand the case to the Director, Texas Service Center, for further action.

In view of the foregoing, the previous decision of the Officer-in-Charge will be withdrawn. The petition is remanded to the director. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of

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<sup>1</sup> See Memo. from Paul W. Virtue, Executive Associate Commissioner (Acting), Office of Programs, U.S. Immigration & Naturalization Service, to Regional Directors, *et al.*, *Revocation of Employment-Based Petitions (I-140s)* (February 27, 1997), indicating that a petition which is believed by a field office to have been incorrectly approved is to be returned to the service center that approved the petition along with a memorandum of explanation. The service center will then either initiate revocation proceedings or reaffirm the petition and return it to the field office along with a memorandum of explanation for the reaffirmation. Because the Texas Service Center assumed jurisdiction of employment-based petitions previously filed at the Vermont Service Center as of April 1, 2006, the AAO will remand the case to the Texas Service Center.

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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 decision of the New York district office is withdrawn. The petition is remanded to the director of the Texas Service Center for further action in accordance with the foregoing and for entry of a new decision.