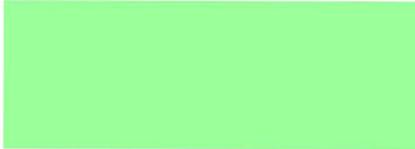




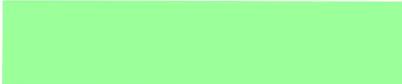
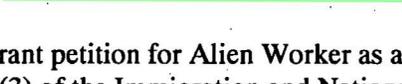
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 08 2013** Office: TEXAS SERVICE CENTER

FILE: 

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, Texas Service Center (TSC), revoked the approval of a Form I-140, Immigrant Petition for Alien Worker, and dismissed a subsequent motion to reopen/motion to reconsider. The petitioner appealed the director's decision, and the Administrative Appeals Office (AAO) rejected the appeal on October 9, 2012. The AAO hereby reconsiders its decision pursuant to 8 C.F.R. § 103.5(a)(5)(i), vacates its decision dated October 9, 2012, and remands the matter to the TSC for further action and a new decision.

The regulation at 8 C.F.R. § 103.5(a)(5)(i) states in pertinent part that a U.S. Citizenship and Immigration Services (USCIS) officer may reopen or reconsider a USCIS decision on his or her own motion in order to make a new decision favorable to the affected party. The motion and favorable decision shall be combined in one action. *Id.*

In this matter, the AAO rejected the appeal because the TSC denied the petition due to the petitioner's failure to file it with a valid labor certification pursuant to 8 C.F.R. § 204.5(l)(3)(i). The TSC determined that the petition was filed on July 24, 2007. The petition was filed with a labor certification filed for a different beneficiary. Accordingly, the petitioner sought to substitute the beneficiary on the labor certification with the current Form I-140 beneficiary. However, as the regulation prohibiting the substitution of beneficiaries became effective on July 16, 2007, the TSC concluded that the petition was filed too late to permit the substitution of the beneficiary. 20 C.F.R. § 656.11; 20 C.F.R. § 656.30(c)(2). The TSC denied the petition, and the AAO rejected the appeal for lack of jurisdiction.¹

Upon further review of the record of proceeding, it is unclear when, exactly, the Form I-140 was received by USCIS. The record contains a Form I-797 receipt notice dated July 25, 2007 bearing a receipt date of July 16, 2007, which would have been timely for substitution purposes. However, the record also contains a Form I-797 approval notice dated June 11, 2008 indicating that the instant Form I-140 was received on July 24, 2007, which would have been after the deadline for beneficiary substitution. USCIS electronic records also indicate that the Form I-140 was received on July 24, 2007. Due to the ambiguity created by the earlier Form I-797, however, it cannot be concluded that the July 24, 2007 receipt date relied on by the TSC was correct.

For this reason, the AAO has reconsidered its decision on its own motion, is vacating its prior decision, and is remanding the matter to the TSC for further consideration of the correct receipt date of the Form I-140 in this matter.

ORDER: The AAO's October 9, 2012 decision is vacated, and the matter is remanded to the TSC for further consideration and action.

¹ Among the AAO's appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.).