

(b)(6)

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



U.S. Citizenship
and Immigration
Services

DATE: JUN 12 2014

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Elizabeth McCormack".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). The petitioner filed an appeal with the Chief, Administrative Appeals Office (AAO). Subsequently, the Department of Labor (DOL), Employment and Training Administration, revoked its approval of the ETA Form 9089, Application for Permanent Employment Certification (labor certification), which accompanied the instant petition. Since the petition is no longer supported by a valid labor certification, the appeal will be dismissed as moot.

On May 15, 2012, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, seeking to employ the beneficiary as a senior civil engineer and to classify him as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(2). On November 5, 2012 the Director denied the petition on the ground that the beneficiary did not have the requisite educational degree to be eligible for classification as an advanced degree professional. On December 3, 2012, the petitioner appealed that decision to the AAO.

On April 7, 2014, the U.S. Department of Labor (DOL), pursuant to 20 C.F.R. § 656.32, issued a Revocation Notice to the petitioner, revoking its prior approval of the labor certification that was issued on behalf of the beneficiary. The regulation at 8 C.F.R. § 204.5(a)(2) specifies that the Form I-140 petition filed on behalf of the beneficiary must be supported by an individual labor certification from the DOL. If the petition is no longer supported by a certified ETA Form 9089, the petition cannot be approved and the issues raised on appeal to this office become moot.

On April 10, 2014, the AAO issued a Notice of Intent to Dismiss (NOID) the appeal based on the DOL's revocation of the labor certification. The NOID granted the petitioner 30 days in which to file a rebuttal or response to the NOID, and advised the petitioner that, according to 8 C.F.R. § 103.2(b)(130(i), the failure to respond to a request for evidence or to a notice of intent to deny by the required date may result in the petition being summarily denied as abandoned, denied based on the record, or denied for both reasons. The petitioner did not respond to the NOID within the 30-day period specified in the NOID, or at any time up to the date of this decision.

Because the labor certification accompanying the petition has been revoked, the petition is not supported by a valid labor certification as required by 8 C.F.R. § 204.5(a)(2). Accordingly, the petition is not approvable and the issues raised in the instant appeal are moot.

ORDER: The appeal is dismissed as moot since the petition is no longer supported by a valid labor certification, as required by regulation, due to the DOL's revocation of its certification of the ETA Form 9089.