



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 09 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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center, on July 20, 2007. On August 8, 2011, the director issued the petitioner a notice of intent to revoke the approval of the petition (NOIR). On September 20, 2011, the director revoked the approval of the petition and invalidated the underlying ETA Form 9089, Application for Permanent Employment Certification (labor certification), which had previously been certified by the U.S. Department of Labor (DOL). The matter then came before us on appeal. On January 11, 2013, we referred the matter to DOL based upon our consultation authority under section 204(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(b). Subsequently, the Employment and Training Administration of DOL advised us that it had issued a Notice of Revocation to the petitioner, revoking the approval of the labor certification (case number [REDACTED]) filed by the petitioner on behalf of the beneficiary. We issued the petitioner a Notice of Intent to Dismiss (NOID) based upon this advisement. The appeal will be dismissed.

The petitioner sought the beneficiary's classification as an employment-based immigrant pursuant to section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petition was accompanied by a labor certification that had been certified by DOL with a filing date of February 13, 2006, the priority date.

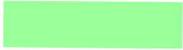
On September 20, 2011, the director invalidated the underlying labor certification and revoked the approval of the petition because the petitioner had not disclosed in Part C.9 of the ETA Form 9089 that the beneficiary is the spouse of the petitioner's owner.¹

On July 8, 2014, DOL issued a notice of revocation of the certification of case number [REDACTED] filed by the petitioner in the instant matter. On July 22, 2014, we sent the petitioner a NOID advising the petitioner of our intent to deny the petition and dismiss the appeal as moot because the Form I-140, Petition for Alien Worker, was no longer supported by a certified ETA Form 9089. In response to our NOID, counsel for the petitioner indicates that the evidence in the record does not demonstrate that the petitioner's president knowingly, intentionally or deliberately misrepresented material facts in his response to Part C.9 of the labor certification. Counsel states that Part C.9 of the Form ETA 9089 can be interpreted in more than one way. The director also addressed this issue in his notice of revocation of the approval of the instant petition. The director stated that the language of Part C.9 is not ambiguous when it asks whether there is a familial relationship between "the owners, stockholders, partners, corporate officers, incorporators, and [the beneficiary]." Accordingly, the director revoked the approval of the instant petition due to the response of the petitioner's president in checking "no" in Part C. 9 of the labor certification. We find that counsel's assertions in response to our NOID do not overcome the director's decision to revoke the approval of the instant petition.

In pertinent part, section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are

¹ The record reflects that the beneficiary and the petitioner's owner were married on August 16, 2004, nearly 18 months prior to the filing of the instant labor certification.

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NON-PRECEDENT DECISION

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sought by an employer in the United States. However, the petition must be accompanied by an individual labor certification approved by DOL. *See* 8 C.F.R. § 204.5(a)(2). Because the certification of 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 the certification of the ETA Form 9089, as the petition is no longer supported by a valid labor certification.