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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 3 2005

EAC 94 045 50851

IN RE:

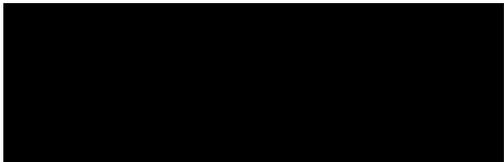
Petitioner:

Beneficiary:



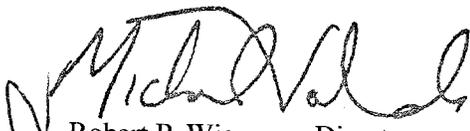
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. On further review of the record, the director determined that the petition was subject to automatic revocation based on the death of the petitioner. The director sent the petitioner's representative a notice of intent to revoke the petition. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner was a private individual. She is now deceased. She had sought to permanently employ the beneficiary in the United States as a live-in yard worker. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was initially approved on February 8, 1994. Prior counsel then notified the Service that the petitioner was deceased and the petition would be withdrawn. Subsequent counsel notified the director that he wished to rescind the withdrawal. The director then concluded that the I-140 was approved in error and notified the petitioner of his intent to revoke the petition on November 16, 2000. Counsel's response and subsequent submission of additional evidence failed to convince the director to revise his decision and the petition's approval was revoked on February 10, 2003, pursuant to 8 C.F.R. § 205.1(a)(3)(iii)(B), which provides that a petition shall be automatically revoked upon the death of the petitioner or beneficiary.

A revocation based on the death of the petitioner pursuant to 8 C.F.R. § 205.1(a)(3)(iii)(B) may not be appealed. The regulation at 8 C.F.R. § 103.1(f)(3)(iii)(D)(2003) restricts appellate review to revocations under 8 C.F.R. § 205.2 not to automatic revocations under 8 C.F.R. § 205.1. As there is no appeal from the instant revocation, the AAO has no jurisdiction to issue a decision in this case and the appeal must be rejected.

ORDER: The petitioner's appeal is rejected.