



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



BE

FILE: [REDACTED]
EAC-01-231-52582

Office: VERMONT SERVICE CENTER

Date: NOV 22 2005

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

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:

SELF-REPRESENTED

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 preference visa petition was initially approved by the Director, Vermont Service Center. Due to the size and scope of the fraud perpetrated by [REDACTED] who was the attorney of record in this visa petition proceeding, the director consequently served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain revoked.

The petitioner is a landscape/constructions firm. It seeks to employ the beneficiary permanently in the United States as a stone mason. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition with a request for substituting the beneficiary on the labor certification. After issuing a NOIR, the director determined that the response to NOIR could not establish that the labor certification and subsequent petition filed on behalf of the beneficiary represents a bona fide job offer and revoked the approval of the petition accordingly.

On appeal, the petitioner submits a brief statement and five samples of his signatures.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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.

In the instant case, a Form ETA 750, Application for Alien Employment Certification was filed on July 1, 1998 by the petitioner through the attorney in question on behalf of an alien worker. On March 15, 1999, the Form ETA 750 was approved by the Department of Labor and a Form I-140 visa petition was subsequently filed and approved. On June 9, 2001, the petitioner through the same attorney filed a new I-140 petition requesting to substitute the beneficiary on the labor certification and the petition was approved on December 5, 2001.

The issue to be discussed in this case is whether or not the director has a good and sufficient cause to issue a NOIR and whether the petitioner's response established that the labor certification and subsequent petition filed on behalf of the beneficiary represents a bona fide job offer.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

In the instant case, [REDACTED] was the attorney of record in the labor certification application, the initially filed I-140 visa petition on behalf of the substituted beneficiary and the visa petition for the instant beneficiary. [REDACTED] was convicted of several federal offenses relating to the fraudulent procurement of immigrant labor certifications and the filing of fraudulent immigrant worker visa petitions.

The AAO finds that the director had good and sufficient cause to revoke the approval of this petition. The petitioner's evidentiary submissions are non-responsive to the critical issue and material fact of this case: that the labor certification and subsequent petition filed on behalf of the beneficiary represents a bona fide job offer.

In his NOIR dated April 8, 2003, the director requests for additional evidence pursuant to the regulations at 8 C.F.R. §204.5(l)(1), 8 C.F.R. §103.2(a)(2) and (7)(i) and 20 C.F.R. §656.21(a). The director specially states:

[the petitioner must] establish that the petitioner did, in fact, retain [redacted] or one of his associates in order to obtain a bona fide labor certification, relating to a bona fide job offer, and then subsequently filed a bona fide Immigrant Petition for Alien Worker, based upon a bona fide job.

The statement should come from a Chief Executive Officer, President, owner, or other responsible officer or employer of the petitioner (should be someone other than that shown on the petition and identified below) that has been signed under oath or "under penalty of perjury under United States law"; identifies the signer's position; and indicates whether:

1. The petitioner retained [redacted] his firm, or one of his associates to file an application for labor certification, and/or an immigrant visa petition on behalf of the beneficiary;
2. The person whose signature appears on the Form I-140 or Form ETA-750 is an officer or other person authorized to sign a document on behalf of the employer; and
3. The signature is genuine.

Immigrant Petition for Alien Worker (I-140) and the Application for Alien Employment Certification (ETA-750) bear the signature of [redacted] who is identified as the petitioner's president. ... [t]he petitioner shall submit five (5) specimens of that person's signature, ...

A response received by the director on June 19, 2003 consisted of a copy of a Form I-140 and a copy of Form G-28 signed by [redacted] on June 1, 2001 but without the attorney's signature, a brief letter from the attorney to the petitioner asking to sign the Form I-140. The petitioner also submitted a brief letter stating that the beneficiary had hired [redacted] in his immigration process. The petitioner's letter verifies that the petitioner did not retain [redacted] his firm, or one of his associates to file an immigrant visa petition on behalf of the beneficiary. Other documents submitted did not establish that the labor certification and subsequent petition filed on behalf of the beneficiary represented a bona fide job offer.

The petitioner did not submit the requested documents in response to the NOIR. However, the petitioner submitted five (5) specimens of the signer's signature that were specially requested in the director's NOIR on the appeal. The purpose of the request for evidence is to elicit further information that clarifies

whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

The AAO concurs with the director's decision and determines that the director had good and sufficient cause to revoke the petition based on the insufficient evidence in factual assertions presented by the petitioner concerning its bona fide job offer.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The director's decision on March 17, 2004 is affirmed. The petition is revoked.