

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

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B6



FILE:

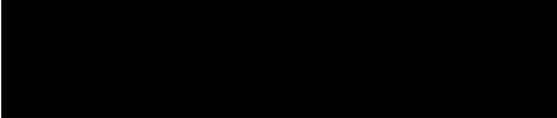
[Redacted]
LIN 02 085 50873

Office: NEBRASKA SERVICE CENTER

Date: JUL 24 2006

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:

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 service center director initially approved the employment-based petition. In relationship to a review of the record based on the beneficiary's pending I-485 petition, on June 9, 2004, the director issued a notice to revoke the petition. Based on the non-response of the petitioner to the notice of intent to revoke the petition, on September 22, 2004, the director revoked the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner is a dry cleaning business. It seeks to employ the beneficiary permanently in the United States as a tailor. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not submitted sufficient evidence to overcome the proposed grounds of revocation and revoked the petition accordingly.

On appeal, the petitioner states that it never received the director's Notice of Intent to Revoke dated June 9, 2004 and thus was unable to respond to the notice in a timely manner. The petitioner submits additional documentation.¹

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General 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." Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

On April 7, 2003, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that a secondary review of the record revealed inconsistencies and inaccuracies that had to be resolved prior to any further processing of the relating I-485 petition. The director noted differences between the work locations and job titles identified on the I-140 petition and accompanying Form ETA 750 Labor Certification Application, and the beneficiary's G-325 Biographic Information, submitted with her I-485 petition.

¹ The petitioner submitted a signed G-28 to the record with its appeal. [REDACTED] who signed the form, is identified as an immigration consultant duly licensed by the Mayor of Chicago. This individual is also identified [REDACTED] in other documents, and a translator with Seoul Consulting Company, Chicago, Illinois. The director did not recognize [REDACTED] the petitioner's attorney of record or representative. Thus, the petitioner is self-represented.

Specifically the director stated that the I-140 petition indicated the beneficiary would work in Libertyville, Illinois, while the G-325 form indicated that she lived in Mokena, Illinois and was currently employed as a manager of a beauty shop in Country Club Hills, Illinois. The director stated that it was not understandable why the beneficiary would terminate a managerial position to work as a tailor in Libertyville, Illinois, a location in North Chicago far removed from her residence. The director also noted that the beneficiary's prior employment at Clean II Cleaners in Shorewood, Illinois² was also a short drive from the beneficiary's residence. The director requested that the petitioner explain these inconsistencies and discrepancies. The director also noted that Form ETA 750, Part B indicated that the beneficiary was employed with Clean II Cleaners in Shorewood, Illinois from July 1996 to April 12, 2001, while the G-325 form indicated she was only employed with Clean II Cleaners through September 2000. The director asked for an explanation of this discrepancy.

The director then requested evidence of the petitioner's continuing ability to pay the proffered wage. Among evidence requested were copies of the beneficiary's 1999, 2000, 2001, 2002, and 2003 federal income tax returns; a copy of the beneficiary's most recent pay voucher that identifies the beneficiary's and the petitioner's name and specifies the beneficiary's gross and net pay, the beneficiary's income received year to date, income tax deductions withheld and the length of the pay period. The director also requested copies of the petitioner's 2000, 2001, 2002, and 2003 federal income tax returns; a copy of the petitioner's annual balance sheets through December 31 for the years 2000 to 2003 indicating the petitioner's accumulative net income or losses for the year. The director also requested a copy of the petitioner's monthly balance sheets through March 31, 2004, as well as copies of the petitioner most recent Form 941, Employers Quarterly Federal Tax Form, or comparable form for the petitioner's state for the first quarter of calendar year 2003.

The director requested that the documents be accompanied by a quarterly wage and withholding supplement which identifies all employees by name and social security number. The director also noted that the petitioner had apparently filed a second employment-based petition for an individual identified [REDACTED] and asked for an explanation of why both beneficiaries are not on the petitioner's payroll, and documentation to demonstrate the petitioner's ability to pay both beneficiaries. The director finally stated that if the petitioner could not demonstrate the ability to pay both individuals, it could identify which petition it desired to withdraw.

On January 30, 2004, the director revoked the petition. In his decision to revoke the decision, the director noted that the petitioner's attorney of record was [REDACTED] & Warren PLLC. The director stated that on October 22, 2003, [REDACTED] guilty to criminal counts of money laundering and conspiracy to commit immigration fraud and [REDACTED] pled guilty to conspiracy to commit immigration fraud. [REDACTED] both consented to the revocation of their licenses to practice law in Virginia on October 24, 2003. The director noted that the conspiracy committed by the petitioner's former counsel involved the submission of fraudulent Forms ETA-750 and fraudulent Forms I-140. The director further stated that it appeared in many cases, the beneficiaries named on the Forms ETA-750 and I-140 were fictitious, or that the petitioner may not have intended to hire the beneficiary named on the form.

² The record also contains a Form I 797A that indicates the Clean II Cleaners business is located in Joliet, Illinois.

The director in the revocation notice stated that the petitioner was provided with a detailed list of documentation to be submitted and thus granted an opportunity to submit any evidence it thought would overcome the grounds of revocation. The director stated that the petitioner failed to submit a response. The director then determined that the grounds of revocation listed in the notice of intent to revoke the petition had not been overcome, and the petition was revoked.

On appeal, the petitioner's owner, [REDACTED] submits a sworn affidavit that states he signed the Form ETA 750, Part as the petitioner and he also signed the Form I-140 as the petitioner, and that there was a bona fide intent to employ the beneficiary as a tailor at Village One Hour Cleaners. [REDACTED] states that the signatures shown on Form I-140 and the Form ETA 750 are his and that he was authorized to sign such documents on behalf of the petitioner/employer. In a second document [REDACTED] identifies the employees of the new business located in Naperville, Illinois as follows: [REDACTED] his wife and the beneficiary. [REDACTED] describes the duties of each employee. [REDACTED] submits the beneficiary's Form W-2 for the years 2002 and 2003. These documents indicate the beneficiary earned \$8,500 in 2002 and \$26,000 in 2003. The employer listed on these documents is identified as Village Cleaners, 3124 S Route 59, Naperville, Illinois.

The petitioner also submits a statement from the beneficiary that states her residential address in Mokena, Illinois, and her residential address in Seoul, Korea. The beneficiary also affirms that the all the information listed on Part B of ETA 750 is true and correct and provides an update of her employment. The updated Form ETA 750 indicates that beneficiary worked for Village Cleaners, in Naperville, Illinois from September 2002 to the present. The document also identifies the beneficiary's former employment with Clean II Cleaners, but describes the job title as Owner/Director. This document is dated December 5, 1998 and the signature appears to be identical to the beneficiary's signature on her passport.

The petitioner also submits monthly bank statements from LaSalle Bank, Chicago, Illinois for the Naperville dry cleaning company for January 2003 and 2004. The petitioner also submitted Form 941 for the first quarter of 2003 and the second quarters of the years 2003 and 2004, as well as state of Illinois quarterly Employer's Contribution and Wage Report for the first and second quarter of 2003 and the second quarter of 2004. All three quarterly reports indicated that the [REDACTED] earned \$6,500 in each quarter.

In addition the petitioner submits a signed lease for the Naperville, Illinois dry cleaning company's building. The petitioner, who is presently a sole proprietor, also submits his IRS Forms 1040 for tax years 1997, 1998, 1999, and 2001 with corresponding Schedules C for the Libertyville dry cleaning store, as well as Forms 1040 for tax years 2002 and 2003 that include Schedules C for the Naperville dry cleaning company. The sole proprietor also submitted IRS Forms 1120S for tax years 2000 and 2001 for the Libertyville dry-cleaning business that indicated the sole proprietor while initially structured as an S corporation had net income of \$86,579 in 2000 and \$130,216 in tax years 2001.

The sole proprietor also submits photographs of two dry cleaning stores. The sole proprietor also submits pages from a telephone directory that includes both dry cleaning companies' telephone listing.

The sole proprietor also states that since it submitted the I-140 petition, it had sold the dry cleaning business and had started another one in a different location. The sole proprietor states that he had provided this information to [REDACTED] former counsel, but that this information was withheld. The sole proprietor also stated that he only received director's letter with the revocation decision dated September 22, 2004 because he happened to drop by the previous business. The petitioner states that the lack of response to the director's notice is not because the petition is fraudulent or fictitious but rather because of former counsel's fraudulent activities. The petitioner's owner identified his current business location as [REDACTED] Naperville, Illinois.

Upon review of the record, the director's notice of intent to revoke the petition and his final decision to revoke the decision are both based on the fact that the petitioner's attorney of record [REDACTED] attorney convicted of visa petition fraud in December 2002. The director revoked the petition because the petitioner did not provide the required documentation outlined in the notice of intent to revoke and thus, the petitioner did not establish that the visa petition submitted by [REDACTED] was not fraudulent. The record contains no evidence that the initial notice was sent to an incorrect address, or that the petitioner had moved from the address listed on the initial petition. It is noted that the director's initial notice to revoke the petition contained no explicit explanation of former counsel's fraudulent activities, and did not address the question of fraudulent signatures. However, the documentation provided by the sole proprietor on appeal, which includes assertions that documents were indeed signed by the petitioner and by the beneficiary, suggest that the sole proprietor is aware of the underlying fraud issues examined by CIS in all petitions submitted by the former counsel.

With regard to any fraud issues involving whether the proffered position was indeed a bona fide position, the documentation provided by the sole proprietor on appeal only further confuses the record. First, the record reflects no documentation that the beneficiary was ever employed at the Libertyville dry cleaning company. As stated previously, the W-2 Forms submitted on appeal are for the Naperville dry cleaning company. In addition, the update provided by the beneficiary submitted on appeal does not reflect any work performed at the Libertyville dry cleaning company. It also does not reflect any tailoring duties performed by the beneficiary at the Clean II Cleaners business in either Shorewood, or Joliet, Illinois. As stated previously, the beneficiary's job duties are described as "direct and develop the dry cleaning business." This would call into question the contents of the ETA 750 submitted with the initial petition that indicated management and tailoring responsibilities. Finally the signatures on these two ETA 750 forms differ which calls into question whether both were indeed signed by the beneficiary.³ *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." The director is well within his authority to revoke the petition based on the discrepancies noted above. See *Estime, Matter of Ho*.

It is noted that the director in the notice to revoke the petition questioned the beneficiary's commute between her residence and the Libertyville dry cleaning store, and stated that her commuting behavior was inconsistent

³ For example, the beneficiary's signature on Part B, of the ETA 750 submitted with the instant petition by former counsel does not conform to her signature in her passport. The beneficiary's signature on the earlier ETA 750 does appear to conform to her passport signature. The fraudulent signing of Forms ETA 750s is a part of the immigration conspiracy to which former counsel pled guilty.

with her prior employment in Shorewood, Illinois. The director described the beneficiary's commute as evidence of inconsistencies and discrepancies in the petition. The AAO regards the director's comments as speculative and immaterial to the underlying regulatory criteria for the petition, namely whether the petitioner has the ability to pay the proffered wage, and whether the beneficiary is qualified to perform the duties of the position. The director's remarks with regard to the beneficiary's commute are withdrawn.

However, the sole proprietor also states that it sold its original business that is the Libertyville dry cleaning company. It is noted that the sole proprietor did not provide any evidence as to the date of the claimed sale, and present ownership of the Libertyville business. The Libertyville dry cleaning business is viewed as the petitioner, and not the present sole proprietor of the dry cleaning business located in Naperville, Illinois. The certified Form ETA 750 is not transferable to the new petitioner, and remains with the original dry cleaning company in Libertyville, Illinois, whose owner may now choose to pursue its identity as a successor in interest to the original petitioner. This status requires documentary evidence that the petitioner has assumed all of the rights, duties, and obligations of the predecessor company. The fact that a petitioner is doing business at the same location as the predecessor does not establish that the petitioner is a successor-in-interest. In addition, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage. Since the record is devoid of any information as to the present ownership of the actual petitioner, the petitioner has not established that it has the ability to pay the proffered wage. Therefore based on the selling of the original business, the director's decision to revoke the petition is sustained.

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 this burden. Therefore the director's decision will be affirmed. The appeal will be dismissed. The petition will be revoked.

ORDER: The director's decision to revoke the instant petition is affirmed. The appeal is dismissed. The petition is revoked.