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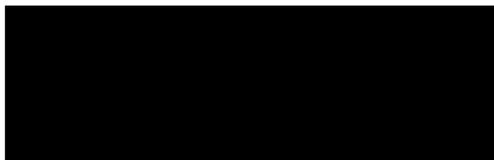
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 01 210 58946 Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2007

IN RE: Petitioner:
Beneficiary:

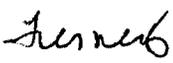


PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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.


For Robert P. Wiemann, Chief
Administrative Appeals Office

CC: Haresh C. Jambusaria
3660 Wilshire Blvd., Ste. 926
Los Angeles, CA 90010

DISCUSSION: The employment based immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director subsequently revoked approval of the petition. The petitioner filed an appeal that was treated as a motion to reopen/reconsider by the director. The director dismissed the motion and affirmed his previous decision to revoke the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision to revoke the approval will be withdrawn and the case will be returned to the director for further investigation and review.

The petitioner is a restaurant. It sought to employ the beneficiary permanently in the United States as a cook of Indian and Bangladeshi style food.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on April 16, 2001. It was initially approved on September 11, 2002. Subsequent to this approval, the beneficiary appeared at the overseas consulate in Mumbai, India for an interview on November 7, 2003. Based on this interview, on September 2, 2004, the consulate returned the petition to the director for review and possible revocation, along with a summary of the interview conducted.

On October 5, 2005, citing the regulation at 8 C.F.R. § 205.2(a) and the overseas consulate interview, the director questioned the beneficiary's qualifications and concluded that the I-140 was approved in error. The director found that the petition should be automatically revoked when "the necessity for revocation comes to the attention of the [Citizenship and Immigration Services (CIS)]."

On October 20, 2005, the petitioner, through counsel¹ filed an appeal, noting that the director failed to comply with the provisions of the regulation at 8 C.F.R. § 205.2 by failing to issue a notice of intent to revoke.

The director treated this appeal as a motion to reopen/reconsider and determined that it failed to overcome the grounds for revocation. The director affirmed the revocation of the petition's approval.

The petitioner appeals the director's decision on motion, reiterating the objections to the revocation and submitting additional evidence in rebuttal to the observations made by the consulate and relied upon by the director in his decision to revoke and in his decision to affirm the revocation on motion.

Section 205 of the Act, states: "[t]he 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."

The regulation at 8 C.F.R. § 205.2, however, provides in pertinent part:

¹ Although counsel appears to have represented the petitioner in the underlying proceedings, we find no notice of appearance (G-28) contained in the record. For that reason, this review will consider the petitioner to be self-represented with a copy of the decision to be sent to counsel. As also noted herein, the record needs to be examined for other omitted documents.

(b) *Notice of intent.* Revocation of the approval of a petition of [or] self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and his opposition to the grounds alleged for revocation of the approval.

As noted by the petitioner, through counsel on appeal, the director did not issue a notice of intent to revoke the I-140 in this matter pursuant to the provisions of 8 C.F.R. § 205.2(b). The director erroneously relied on section (a) of that regulation providing for automatic revocation of a petition's approval under specific circumstances, which are not present in this matter.² As such, the director's attempted revocation of the I-140 on October 5, 2005, has no effect. The I-140 remains approved.

Based on the foregoing, further examination of the other factual issues raised by the petitioner on appeal is premature. The case will be returned to the director for further investigation and consideration.

It must be noted that this record is incomplete and should be reconstructed before the director undertakes further review. Upon review of its contents, we note that the original labor certification, including both Part A and Part B are missing. We further note that the consulate report refers to two employment letters submitted on behalf of the beneficiary. We find only one letter, dated February 20, 2001, in the record as it currently stands. If the director elects to proceed with the revocation on the record of proceeding, the procedure outlined in 8 C.F.R. § 205.2(c) should be used.

Order: The director's decision of May 5, 2005 is withdrawn. The case will be returned to the director for further investigation and review.

² Those circumstances are found at 8 C.F.R. § 205.1(a)(3)(iii) and include the death of either the petitioner or beneficiary, invalidation of the labor certification, written notice of withdrawal by the petitioner, or termination of the petitioner's business.