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U.S. Department of Homeland Security
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Washington, DC 20529-2090
MAILSTOP 2090



U.S. Citizenship
and Immigration
Services

B6

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 10 2008

EAC 05 119 53065

IN RE:

Petitioner:

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director initially approved the employment-based preference visa petition on March 29, 2005. The director issued a Notice of Intent to Revoke (NOIR) the petition's approval dated August 17, 2006, and then a Notice of Revocation dated November 6, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director.

The petitioner is a wood work company. It seeks to employ the beneficiary permanently in the United States as a wood finisher. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition.

In the NOIR the director stated that the petitioner had not established its continuing ability to pay the proffered wage as of the 2001 priority date and noted the absence of the petitioner's federal tax returns or other documentation listed at 8 C.F.R. § 204.5(g)(2), namely audited financial statements or annual reports for tax years 2001 through 2005. The director also stated that the petitioner had not established that an employee¹ whose wages would be used to pay the beneficiary's wages had actually left the petitioner's employment. The director also stated that the petitioner had not established the beneficiary's requisite two years of relevant work experience prior to the April 30, 2001 priority date.

In the director's Notice of Revocation (NOR) dated November 6, 2006, the director then noted that the petitioner had not responded to the NOIR and that the approval of the petition was revoked.

The director received a Form I-290-B on November 22, 2006 in which counsel states that neither he nor the petitioner had received the director's NOIR, and that it would be a denial of due process to revoke the petition's approval without giving counsel or the petitioner an opportunity to rebut or reply to any finding that caused the revocation. Counsel sent an additional letter dated August 21, 2007 that refers to Citizenship and Immigration Services (CIS) correspondence sent to counsel's office with regard to the need for additional evidence with regard to the beneficiary's I-485 application. Counsel also submits one additional letter dated July 17, 2008 and reiterates that neither he nor the petitioner's owner has received any correspondence regarding the I-140 petition and have any idea why the I-140 petition's approval was revoked.

Upon review of the record, the AAO cannot determine whether the director resent the original NOIR to the petitioner. An internal CIS database indicates that on January 16, 2007, the director reopened the matter without an appeal, cancelling the previous action of revocation, and that a notice of reopening the matter was sent. However, the record does not reflect any additional correspondence from the director dated January 16, 2007. Thus, the record reflects no further determination or evidence of any resubmittal of the original NOIR to the petitioner.

The matter will be remanded to the director for further consideration of whether the director sent the NOIR to the petitioner. If the director is unable to ascertain that the petitioner received the NOIR after counsel responded to the director's NOR, the director should send counsel and the petitioner a copy of the original NOIR that outlines the reasons for the proposed revocation. The petitioner should be provided an opportunity to respond to the director's NOIR with regard to the petitioner's ability to pay the proffered wage and with regard to the beneficiary's two years of relevant work experience prior to the priority date.

¹ This employee was identified as [REDACTED]

ORDER: The petition is remanded to the director in accordance with the instructions above.