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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **APR 14 2009**
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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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

CC: [REDACTED]

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Nebraska Service Center. In connection with the beneficiary's Form I-130, Petition for Alien Relative, the District Director of the Denver, Colorado district office served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the District Director of the Denver, Colorado district office ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter was appealed to the Administrative Appeals Office (AAO).¹ The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a head cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the July 22, 2005 NOR, the district director determined that the beneficiary is ineligible for the benefit sought due to marriage fraud under section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c) and, therefore revoked the petition's approval accordingly.

The Form EOIR-29 indicates that the beneficiary retained counsel to file the appeal. United States Citizenship and Immigration Services' (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). No Form G-28, Notice of Entry of Appearance as Attorney or Representative, was submitted signed by both counsel and the petitioner's authorized representative.² As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

¹ The petitioner improperly filed the appeal on Form EOIR-29. The correct form for filing this appeal is Form I-290B. On October 7, 2008, the District Director of the Denver, Colorado district office attempted to certify his decision to the AAO for review. However, as an appeal was filed, the AAO will consider the matter as an appeal and not as a certification.

² On January 15, 2009, the AAO sent a Notice of Derogatory Information (NDI) to the petitioner stating that [REDACTED] filed the instant appeal on behalf of the beneficiary, notifying the petitioner that the file does not contain a properly executed G-28, and requesting a Form G-28 signed by the petitioner. The petitioner was afforded 30 days from the date of the NDI in which to respond. The petitioner did not respond to the NDI. The NDI also notified the petitioner that during the adjudication of the appeal, the AAO determined that the petitioning business in this matter, [REDACTED] was dissolved on February 28, 2005 in the State of Colorado. See [http://www.sos.state.co.us/biz/BusinessEntityDetail.do?quitButtonDestination=BusinessEntityResult&nameTyp=ENT&masterFileId=\[REDACTED\]](http://www.sos.state.co.us/biz/BusinessEntityDetail.do?quitButtonDestination=BusinessEntityResult&nameTyp=ENT&masterFileId=[REDACTED]) (accessed January 12, 2009). The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); see also 8 C.F.R. § 204.5(g)(2). We note that the regulation at 8 C.F.R. § 205.1(a)(3)(iii) provides for automatic revocation of petitions approved under section 203(b) of the Act upon termination of the employer's business in an employment-based preference case. Further, the NDI noted that under 20 C.F.R. § 656.20(c)(8) and § 656.3, the petitioner has the burden when

A courtesy copy of this decision will be provided to the beneficiary's counsel.

ORDER: The appeal is rejected as improperly filed.³

asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000). The NDI noted that in the instant case, the evidence in the record shows that the petitioner, [REDACTED] was owned in equal shares by [REDACTED] and his wife. [REDACTED] is the beneficiary's cousin. The petitioner failed to provide evidence to establish that the petitioner has made a *bona fide* job offer to the beneficiary and that the relationship between the petitioner and the beneficiary was disclosed to the DOL during labor certification proceedings. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986).

³ The AAO notes that the appeal could alternatively be rejected as untimely filed. In order to properly file an appeal, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal within 15 days after service of the decision to revoke the approval. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). The record indicates that the District Director of the Denver, Colorado district office issued the NOR on May 13, 2005. The appeal was received by USCIS on June 6, 2005, or 24 days after the decision was issued. Accordingly, the appeal was untimely filed.