



U.S. Citizenship  
and Immigration  
Services

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File: [Redacted]  
EAC 02 091 52229

Office: VERMONT SERVICE CENTER

Date: AUG 05 2009

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:



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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The acting director, Vermont Service Center, initially approved the preference visa petition on March 16, 2002. The acting director served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition on March 3, 2004 and subsequently revoked that approval on June 28, 2004. The petitioner appealed to the Administrative Appeals Office (AAO). The AAO remanded the appeal to the Vermont Service Center on November 20, 2007 to consider additional issues, correct errors, and re-issue a more accurate and comprehensive NOIR. The acting director later served the petitioner with a second NOIR on November 3, 2008 and subsequently affirmed the revocation. The director certified his decision dated May 15, 2009 to the AAO. The director's decision will be affirmed. The petition's approval will remain revoked.

The petitioner operates a restaurant. It seeks to employ the beneficiary permanently in the United States as a restaurant manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, certified by the U.S. Department of Labor (DOL). The acting director determined that the beneficiary had previously entered into or attempted to enter into a sham marriage for the purpose of evading immigration laws and revoked approval of the petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c). The acting director denied the petition accordingly. The procedural history of this case is documented in the record and incorporated into the decision. The primary issue in this case is whether or not approval of the petition must be revoked based on section 204(c) of the Act.

Section 205 of the Act, 8 U.S.C. § 1155, states:

The 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), provides for the following:

Notwithstanding the provisions of subsection (b)<sup>1</sup> no petition shall be approved if:

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [director] to have been entered into for the purpose of evading the immigration laws; or
- (2) the [director] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration

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<sup>1</sup> Subsection (b) of section 204 of the Act refers to preference visa petitions that are verified as true and forwarded to the State Department for issuance of a visa.

laws.

Section 203(b)(3)(A)(i) of 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.

The AAO reviewed the record of proceeding under its *de novo* review authority. The authority to adjudicate certifications is delegated to the AAO by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296.

Certifications by district directors may be made to the AAO “when a case involves an unusually complex or novel issue of law or fact.” 8 C.F.R. § 103.4(a)(1).

The regulation at 8 C.F.R. § 103.4(a)(4) states as follows: “*Initial decision.* A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision.” The following subsection of that same regulation states as follows: “*Certification to [AAO].* A case described in paragraph (a)(4) of this section may be certified to the [AAO].” 8 C.F.R. § 103.4(a)(5).

The director’s certified decision to the AAO dated May 15, 2009 states that the acting director issued a NOIR on November 3, 2008, advising the petitioner of the deficiencies and inconsistencies of record that predicated a revocation. The NOIR called for the submission of certain documentation to overcome the stated grounds for revocation. In response to the NOIR, the petitioner requested the withdrawal of the I-140 petition filed on behalf of the beneficiary. The petitioner has not submitted documentation to overcome the grounds of revocation cited in the NOIR.

Therefore, in compliance with the petitioner’s request, the approval of the immigrant petition for alien worker will be automatically revoked in accordance with 8 C.F.R. § 205.1(a)(3)(iii)(C)<sup>2</sup>, which states that petitions may be withdrawn upon written notice filed by the petitioner.

**ORDER:** The director’s certified decision from May 15, 2009 is affirmed. The petition’s approval remains revoked.

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<sup>2</sup> 8 C.F.R. § 205.1(a)(3)(iii)(C) states that automatic revocation will occur “[u]pon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitions.”