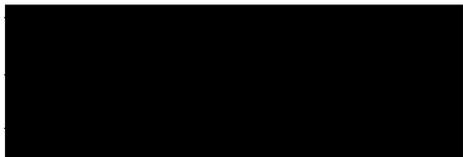


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

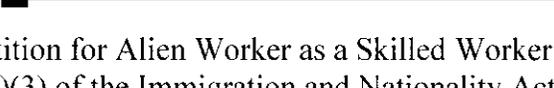


U.S. Citizenship
and Immigration
Services



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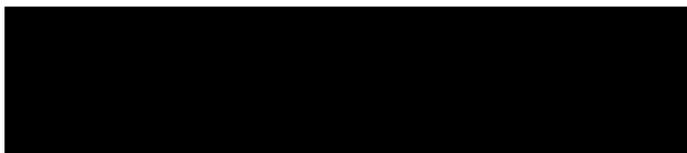
File:  Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: 
Beneficiary: 

FEB 07 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, approved the employment-based immigrant visa petition on August 28, 2006. On April 28, 2008, the director revoked the approval of the petition, which is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director is withdrawn, and the matter is remanded to the director for a new decision.

The petitioner is a hotel. It seeks to employ the beneficiary permanently in the United States as a hotel manager pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (the DOL), accompanied the petition. Upon reviewing the petition, the director revoked the petition's approval concluding that the petitioner failed to establish that the beneficiary is qualified for the position sought. The director relied, in part, on averments made in a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the INA, in revoking the petition's approval. Although the director did not specifically make reference to the Form I-687 in his decision, the Notice of Intent to Revoke issued on January 30, 2008 made clear that averments in that document formed the basis for the revocation.

On December 6, 2010, the AAO issued a Notice of Derogatory Information and Request for Evidence seeking clarification on a number of issues in the record or proceeding, including the director's apparent use of the Form I-687 as a partial basis for the revocation of the petition's approval. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On January 19, 2011, the petitioner responded to the AAO's notice and indicated that U.S. Citizenship and Immigration Service's reliance on averments made in a Form I-687 to revoke the petition's approval is prohibited by section 245A(c)(5) of the Act, 8 U.S.C. § 1255a(c)(5).

Upon review, the AAO agrees with counsel's argument. Accordingly, the director's decision and the director's Notice of Intent to Revoke (NOIR) is withdrawn, and the matter is remanded to the Nebraska Service Center for further consideration and a new decision which does not rely on, or make reference to, any averments made in the beneficiary's Form I-687. The AAO will also withdraw its own notice dated December 6, 2010, which cites to the director's decision and NOIR, to the extent the AAO's notice makes reference to the Form I-687.

ORDER: The director's decision is withdrawn, and the petition is remanded to the director for issuance of a new decision which does not rely on, or make reference to, any averments made in the beneficiary's Form I-687.

¹ 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.