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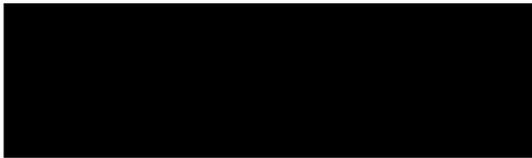
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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MAR 24 2011

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

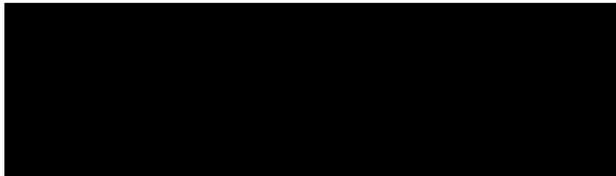
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was initially approved by the Director, Nebraska Service Center, and then subsequently denied. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petitioner filed a motion to reopen, which the director reopened and affirmed his prior decision. The petitioner then appealed. The petition will be remanded to the director in accordance with the following.

The record of proceeding and the records of United States Citizenship and Immigration Services (USCIS) reveal the following:

1. The petitioner filed a Form I-140 petition on August 27, 2007.
2. The director issued a request for evidence (RFE) on November 20, 2008.
3. The petitioner's response to the director's RFE was received by USCIS on December 22, 2008.
4. The director approved the Form I-140 petition on January 13, 2009 and issued an approval notice to the petitioner.
5. The director subsequently issued a decision denying the previously approved Form I-140 petition on April 3, 2009.
6. The petitioner filed a motion to reopen the director's April 3, 2009 decision denying the Form I-140 petition stating, in part, that the director erred in issuing a denial of the previously approved petition without notice to the petitioner which was a violation of the petitioner's due process rights.
7. By decision dated July 17, 2009, the director granted the petitioner's motion to reopen and reaffirmed its prior decision denying the petition on the grounds that the petitioner did not establish its ability to pay the proffered wage from the priority date. In so doing, the director stated that the prior approval of the Form I-140 was due to administrative error.
8. On August 17, 2009, the petitioner filed a timely appeal to the director's July 17, 2009 decision.

The regulation at 8 C.F.R. § 205.2 provides for the revocation of a petition's approval under section 204 of the Immigration and Nationality Act upon proper notice to the petitioner. The regulation provides as follows:

***§ 205.2 Revocation on notice.***

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in §205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition of 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 in opposition to the grounds alleged for revocation of the approval.

(c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

(d) *Appeals.* The petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. The appeal must be filed as provided in part 3 of this chapter, unless the Associate Commissioner for Examinations exercises appellate jurisdiction over the revocation under part 103 of this chapter. Appeals filed with the Associate Commissioner for Examinations must meet the requirements of part 103 of this chapter.

In this instance, the director approved a Form I-140 petition on January 13, 2009 and an approval notice was issued to the petitioner. He then issued a decision on April 3, 2009 denying the petition without first giving notice of the director's Intent to Revoke or revoking the prior approval. On motion to reopen by the petitioner, the director stated that the prior approval was the result of administrative error and affirmed the decision denying the petition. The director's actions do not follow the above cited regulation. As noted above, the director must issue a Notice of Intent to Revoke (NOIR) giving the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. After considering the petitioner's response, if any there be, the director may then issue a Notification of Revocation (NOR) providing the petitioner with a written notification of the decision explaining the reasons for revocation. If, after considering the petitioner's response to the NOR, the director finds that the petition should be approved, he may grant the petition. The petitioner shall have the right to appeal any revocation within 15 days of service of notice of the revocation, all as set forth in the regulation cited above at 8 C.F.R. § 205.2.

In view of the foregoing, the director's April 3, 2009 decision denying the Form I-140 petition shall be withdrawn, as well as the director's decision of July 17, 2009. The petition will be remanded to the director for issuance of a NOIR in accordance with the regulation, allowing time for the petitioner to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval, after which the director shall issue a new decision commensurate with the directives of this decision.

**ORDER:** The director's decisions of April 3, 2009 and July 17, 2009 are withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which is to be certified to the AAO for review.