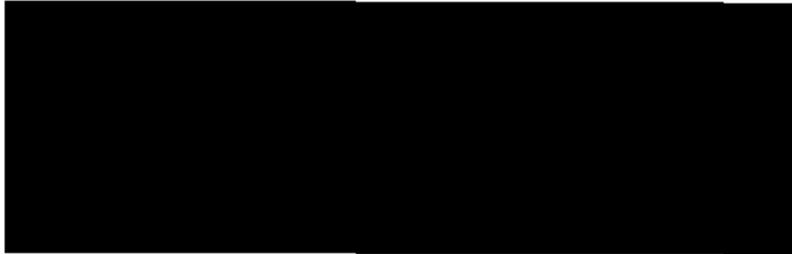


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: OCT 26 2011

OFFICE: TEXAS SERVICE CENTER

FILE:

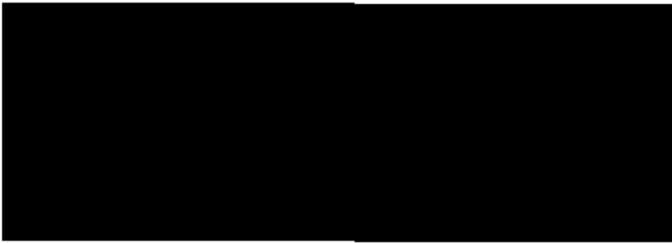


IN RE: Petitioner:
Beneficiary:



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.

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner filed an appeal. Subsequently, the Department of Labor (DOL), Employment and Training Administration, advised the AAO that it had issued a Notice of Revocation to the petitioner, revoking approval of the ETA Form 9089, Application for Permanent Employment Certification (case number [REDACTED]) filed by the petitioner on behalf of the beneficiary. The AAO issued a Notice of Intent to Deny based upon this advisement. This appeal will be dismissed.

The petitioner sought the beneficiary's classification as an employment-based immigrant pursuant to section 203(b)(2) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(2) as a skilled worker. The petition was accompanied by an approved Application for Permanent Employment Certification, ETA Form 9089 from the Department of Labor (DOL).

On June 4, 2007, the director denied the petition, determining that the petitioner, did not fit the definition of an "employer" under 8 C.F.R. § 204.5(c) because it was not making a *bona fide*, full-time, permanent job offer to directly employ the beneficiary rather than to employ him as an independent contractor.

Upon advisement that on September 21, 2007, DOL had issued a notice of revocation of certification of case number [REDACTED] filed by the petitioner in the instant matter, on August 30, 2011, the AAO advised the petitioner that it intended to deny the petition and dismiss the appeal as moot because the Form I-140, Petition for Alien worker was no longer supported by a certified ETA Form 9089.¹

In this matter, section 203(b)(3) of the Act, 8 U.S.C. § 1153(b)(3), provides immigrant 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. However, the petition must be accompanied by an individual labor certification approved by the Department of Labor. *See* 8 C.F.R. § 204.5(a)(2). Because the certification of this labor certification has been revoked, the petition is not supported by a valid labor certification, and further pursuit of the matter at hand is moot.

ORDER: The appeal is dismissed, based on DOL's revocation of certification of the ETA Form 9089, as the petition is no longer supported by a valid labor certification.

¹ DOL revoked the certification of the ETA Form 9089 pursuant to the regulation at 20 C.F.R. § 656.32(b)(2), because the employer did not respond to the DOL's Notice of Intent to Revoke within the allotted timeframe.