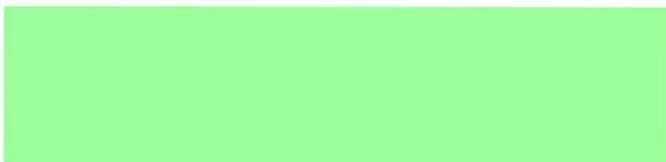


(b)(6)

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

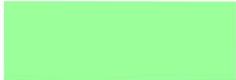


U.S. Citizenship
and Immigration
Services

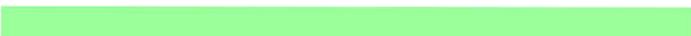


Date: **AUG 07 2012**

Office: TEXAS SERVICE CENTER

FILE: 

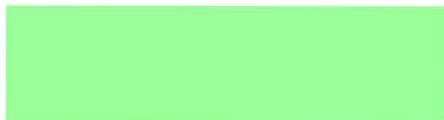
IN RE:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the matter will be remanded to the director for further consideration and a new decision.

The petitioner describes itself as a general contractor. It seeks to employ the beneficiary permanently in the United States as a stonemason/marble setter. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the U.S. Department of Labor (DOL).

The director's decision denying the petition concludes that the ETA Form 9089 was not valid when the petition was filed. The director denied the petition accordingly.

Title 20 Code of Federal Regulations § 656.30(b)(1) states:

An approved permanent labor certification granted on or after July 16, 2007 expires if not filed in support of a Form I-140 petition with the Department of Homeland security within 180 calendar days of the date the Department of Labor granted the certification.

The ETA Form 9089 submitted by the petitioner in this case bears validity dates from "1/20/2009 to 7/19/2009," therefore by regulation it must have been filed in support of a Form I-140 by July 19, 2009. The U.S. Postal Service tracking information in the record states that the petition arrived at the Service Center on July 17, 2009, and the status of the package on that day was "Arrival at Unit" and "Notice Left." The package was given the status of "Delivered" on July 20, 2009. The Form I-140 was also stamped as received by the Texas Service Center on July 20, 2009 which fell on a Monday, therefore it was received on the first working day following the expiration date of Sunday, July 19, 2009. *See* definition of "Day" at 8 C.F.R. § 1.2. Therefore, the labor certification was valid at the date the petition arrived at the Service Center, and the petition was therefore incorrectly returned to the petitioner.

The AAO will withdraw the decision and remand the case to the director to adjudicate the merits of the petition, consider the evidence presented and request any evidence required. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for the issuance of a new decision.