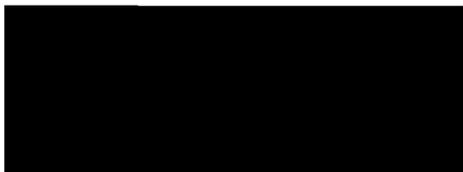


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

Date: **APR 05 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:

SELF-REPRESENTED

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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On December 14, 2001, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on February 2, 2002. However, the Director of the Texas Service Center (“the director”) revoked the approval of the immigrant petition on May 23, 2009, and the petitioner subsequently appealed the director’s decision. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I). The AAO will invalidate the alien employment certification, Form ETA 750.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook 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 labor certification approved by the U.S. Department of Labor (DOL) accompanied the petition. The director determined that the petitioner had failed to demonstrate that it followed the DOL’s recruitment procedures and found that the beneficiary did not have the requisite work experience in the job offered as of the priority date. Accordingly, the director revoked the approval of the petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On December 27, 2011, the AAO issued a Request for Evidence and Notice of Derogatory Information (RFE/NDI) noting that the petitioning company [REDACTED] located in [REDACTED] had been closed and was no longer an active business since 2005.² Specifically, the AAO states, “If the original petitioning business has been dissolved and is no longer an active business, the petition and its appeal to this office have become moot.”³

In addition, a review of the record does not show that the person signing the Form ETA 750 (Application for Alien Employment Certification) and the Form I-140 petition as well as the person appealing the director’s decision is an authorized representative of the petitioning

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.

² The petitioner has not been dissolved.

³ Where there is no active business, no legitimate job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition’s approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer’s business in an employment-based preference case.

company.⁴ On May 14, 2010, USCIS telephonically contacted the petitioner (telephone number [REDACTED]) and learned that [REDACTED] was the manager at the time the petitioner filed the appeal with the AAO on June 10, 2009. Further, on May 17, 2010, USCIS telephonically contacted [REDACTED] (telephone number [REDACTED]).⁵ [REDACTED] stated that there were no [REDACTED] managers in [REDACTED] by the name of [REDACTED]. [REDACTED] also checked the employment database and found no record showing that [REDACTED] was ever employed by [REDACTED].

The AAO's RFE/NDI then stated, "If, in fact, you [referring to [REDACTED]] were never employed by [REDACTED] of if you were not authorized to sign any documentation on behalf of the beneficiary, then the signatures on the Form ETA 750 and I-140 were fraudulent, and we may invalidate the Form ETA 750 based on your fraud or willful misrepresentation."⁶

The AAO in the RFE/NDI advised the petitioner to submit documentary proof showing that [REDACTED] was authorized to file the Form ETA 750 with the DOL and the Form I-140 petition with USCIS.⁷ The AAO afforded the petitioner 30 days to respond. The record before the AAO is now closed. As of this date, no further documentation has been sent by the petitioner or received by the AAO. The AAO specifically alerted the petitioner that the AAO would reject the appeal should the party filing the appeal fail to respond to the RFE/NDI.

Because the petitioner has failed to respond and provide documentary evidence as requested, we conclude that the labor certification, the petition, and the appeal were all not filed by an authorized person of the company. Therefore, the appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

⁴ The person referred to here is [REDACTED]

⁵ USCIS investigation has determined that [REDACTED] acquired [REDACTED] on June 27, 2007.

⁶ The regulation at 20 C.F.R. § 656.31(d) (2001), which was the regulation applicable when the Form ETA 750 was filed for processing with the U.S. Department of Labor (DOL) stated:

If a Court, the INS or the Department of State determines that there was fraud or willful misrepresentation involving a labor certification application, the application shall be deemed invalidated, processing shall be terminated, a notice of the termination and the reason therefor shall be sent by the Certifying Officer to the employer, and a copy of the notification shall be sent by the Certifying Officer to the alien, and to the Department of Labor's Office of Inspector General.

⁷ The AAO sent a copy of the RFE/NDI to the petitioner's current [REDACTED] who spoke with USCIS on May 14, 2010.

Further, because the petitioner failed to respond to the AAO's RFE/NDI, the AAO finds that the Form ETA 750 and the Form I-140 were both signed by an unauthorized agent of the petitioning business. For this reason, we will invalidate the Form ETA 750.

ORDER: The appeal is rejected.

FURTHER ORDER: The alien employment certification, Form ETA 750, ETA case number [REDACTED] filed by the petitioner is invalidated.