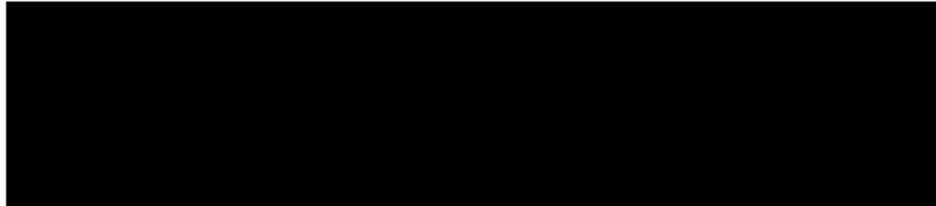


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

Date: DEC 04 2012

Office: TEXAS SERVICE CENTER

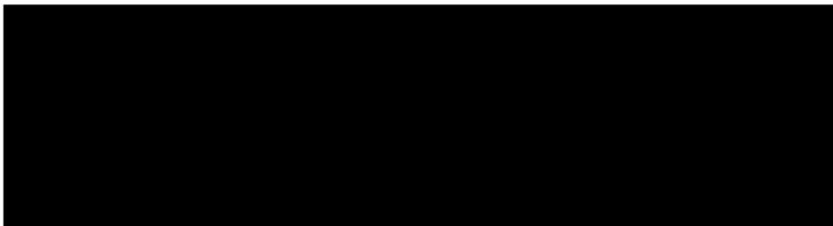
FILE: 

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: On July 1, 2002, 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 March 21, 2003. On February 2, 2009, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition. In response, on February 9, 2009, the petitioner subsequently requested that the petition be withdrawn. The director of the Texas Service Center (the director), revoked the approval of the immigrant petition on June 13, 2009, and the petitioner subsequently appealed the director's decision to revoke the petition's approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. As the petitioner's request to withdraw the approved petition was received by the director prior to the director's decision to revoke the approval of the petition, the petition's approval has automatically revoked. The issues in this proceeding are now moot and the appeal will be dismissed on that basis.

The petitioner is an assisted living facility. It seeks to employ the beneficiary permanently in the United States as a mental retardation aide pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, a labor certification approved by the Department of Labor accompanied the petition. Subsequent to the petition's approval, the director determined that the petitioner failed to follow the U.S. Department of Labor (DOL) recruitment procedures in connection with the approved labor certification application and failed to establish that the beneficiary possessed the minimum requirements on the ETA 750 prior to the date of the filing of the labor certification application. Therefore, the director revoked the March 2003 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 February 17, 2009, USCIS received a letter from [REDACTED] the petitioner's Executive Director, withdrawing the petition and indicating that the petitioner no longer employed the beneficiary. In the letter, dated February 9, 2009, the petitioner stated "we withdraw all representation and interest in this petition." The regulation at 8 C.F.R. § 205.1(a)(iii)(C) provide that the approval of the petition is automatically revoked "upon written notice of withdrawal filed by the petitioner...with any officer of [USCIS] who is authorized to grant or deny petitions." Therefore, the petition was automatically revoked when it was received by USCIS on February 17, 2009, regardless of whether USCIS acted upon it.¹

The AAO further notes that 8 C.F.R. § 103.2(b)(6) states that a petitioner can withdraw an approved petition up until the beneficiary's adjustment of status to permanent residence. This withdrawal may

¹ The regulation at 205.1(b) states that USCIS shall send a notice of automatic revocation to the petitioner when it appears that an automatic revocation provision has been triggered. This notice is not a requirement to perfect the automatic revocation. The automatic revocation occurred by operation of law when USCIS received the petitioner's notice of withdrawal of the petition.

not be retracted. Thus, the petitioner's attempt to continue with the petition as per the letter received by USCIS on March 4, 2009, signed by [REDACTED] has no effect.

The AAO concludes that the petitioner's February 2009 withdrawal resulted in an automatic revocation of the petition which predates the director's June 13, 2009 revocation. Accordingly, the director's decision to revoke the petition will be withdrawn and the issues in this proceeding are moot.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed as moot.