



U.S. Citizenship
and Immigration
Services

[REDACTED]

BE

Date: DEC 19 2012

Office: TEXAS SERVICE CENTER FILE:

[REDACTED]

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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:

[REDACTED]

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: This case comes before the Administrative Appeals Office (AAO) on certification for review from the Director of the Texas Service Center, pursuant to 8 C.F.R. § 103.4(a).¹ Upon review, the AAO will affirm the director's decision to revoke the approval of the petition.

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).² As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The preference visa petition was initially approved by the Director, Vermont Service Center, on September 12, 2003. However, on June 13, 2012 the Director of the Texas Service Center (the director) revoked the approval of the immigrant petition, invalidated the labor certification, and certified the decision to the AAO for review pursuant to 8 C.F.R. § 103.4(a).

In the Notice of Certification dated June 13, 2012 (NOC) the director determined that: (a) the petitioner failed to show that the recruitment process was conducted in good faith and that there is no objective, independent evidence to establish that the petitioner actively participated in the recruitment process and followed DOL recruitment requirements; (b) the beneficiary did not have the requisite work experience in the job offered as of the priority date; and (c) the petitioner failed to establish that it has the ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence.

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

We will discuss each of the director's finding as follows.

a. Whether there was fraud or willful misrepresentation involving labor certification.

The director stated in the Notice of Intent to Revoke dated March 30, 2009 (2009 NOIR) that the instant case might involve fraud because the petition was filed by [REDACTED] who, at the time, was under U.S. Citizenship and Immigration Services (USCIS) investigation for submitting fraudulent Form ETA 750 labor certification applications and Form I-140 immigrant

¹ Under 8 C.F.R. § 103.4(a)(1) allows certifications by district directors to the AAO for review "when a case involves an unusually complex or novel issue of law or fact."

² 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.

worker petitions.³ The director then advised the petitioner to submit additional evidence to demonstrate that the petitioner complied with DOL recruiting requirements and that the beneficiary had at least two years of work experience in the job offered before the labor certification application was filed with DOL.

In response to the director's 2009 NOIR and to demonstrate that the petitioner conducted good faith recruitment, the petitioner through Mr. Dvorak submitted the following evidence:

- Copies of the advertisements published in the *Boston Herald* on December 24, 2000; December 31, 2000; and from December 9, 2001 through December 16, 2001;
- A copy of correspondence to Attorney [REDACTED] from the *Boston Herald* confirming the order to place advertisements in the *Boston Herald*;
- A letter dated April 6, 2009 from [REDACTED] owner of the petitioner, stating that the petitioner satisfied the recruitment guidelines issued by DOL at the time the labor certification application was originally submitted; and
- A letter dated April 10, 2009 from [REDACTED] stating that he posted and published all necessary advertisements and conducted recruitment as was required by DOL.

The director then issued another NOIR to the petitioner on January 12, 2012 (2012 NOIR), noting that the petitioner signed the Form ETA 750 on December 19, 2000 – a few days before the petitioner initially placed the advertisement in the newspaper on December 24, 2000. The director indicated that by signing the Form ETA 750 the petitioner certified that the recruitment was complete. For this reason, the director asked the petitioner to submit additional evidence showing the petitioner's role in recruiting U.S. workers (i.e. how many candidates were interviewed for the job offered, how the interviews were conducted, and how it was determined that no other U.S. candidates were eligible for the position) and to provide copies of the in-house posting notice and other independent objective evidence to show that the petitioner actively participated in the recruitment process. However, no additional evidence was provided by the petitioner.

USCIS, pursuant to 20 C.F.R. § 656.31(d) (2004), may invalidate the labor certification based on fraud or willful misrepresentation. That regulation 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.

³ [REDACTED] has since been suspended from practice before the United States Department of Homeland Security (DHS) for three years from March 1, 2012. He will be referred to throughout this decision by name.

Considering all of the evidence submitted (i.e. the copies of the advertisement and the statement of [REDACTED]), the AAO finds that the petitioner conducted the reduction in recruitment process, which was allowed at the time,⁴ and that there are no inconsistencies or anomalies with the recruitment. Further, we find that there has been an insufficient development of the facts upon which the director can make a determination of fraud or willful misrepresentation in connection with the labor certification process based on the criteria of *Matter of S & B-C-*, 9 I&N Dec. 436, 447 (A.G. 1961). Accordingly, the director's finding of fraud or willful misrepresentation and his decision to invalidate the certified Form ETA 750 will be withdrawn.

b. The beneficiary's Qualifications for the Job Offered.

Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate that the beneficiary has all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition as of the priority date – which is the date the Form ETA 750 was accepted for processing by any office within the employment system of DOL. To determine whether a beneficiary is eligible for a preference immigrant visa, USCIS must ascertain whether the beneficiary is, in fact, qualified for the certified job. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Madany v. Smith*, 696 F.2d, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Here, the Form ETA 750 was filed and accepted for processing by DOL on April 30, 2001. The name of the job title or the position for which the petitioner seeks to hire is "Cook." Under section 13, the petitioner wrote, "Prepare all types of dishes." Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two years of work experience in the job offered. On the Form ETA 750, part B, signed by the beneficiary on December 19, 2000, he represented he worked 40 hours a week as a cook at "Fazenda Hotel Cachoeiras do Rio" from December 1996 to November 1999.

The record contains the following evidence to show that the beneficiary had the requisite work experience in the job offered before the priority date (April 30, 2001):

- A letter of employment verification dated March 12, 2001 from [REDACTED] Administrative Manager, stating that the beneficiary exercised the functions of a cook and

⁴ Under the reduction in recruitment process, the employer could, before filing the Form ETA 750 with the local office, conduct all of the recruitment requirements including placing an advertisement in a newspaper of general circulation and posting a job notice in the employer's place of business. See 20 C.F.R. §§ 656.21(i)-(k) (2001).

pizza maker at Fazenda Hotel Cachoeiras do Rio das Pedras from from December 1996 to November 1999;

- A letter of employment verification dated April 7, 2009 from ██████████ Owner, stating that the beneficiary worked at Fazenda Hotel Cachoeiras do Rio das Pedras as a cook and pizza maker from December 1996 to November 1999 ; and
- A copy of the business registration (CNPJ) of Fazenda Hotel Cachoeiras do Rio das Pedras.⁵

The director indicated in the 2012 NOIR that both letters of employment verification from Fazenda Hotel Cachoeiras do Rio das Pedras lacked a sufficient description of the training received or experience of the beneficiary. The beneficiary also, according to the director, failed to include his last occupation abroad on the Form G-325 (Biographical Information), which he filed along with the Application to Register Permanent Residence or Adjust Status (Form I-485). Additionally, the director noted that the beneficiary claimed on the Form G-325 to have lived in Araguaia, Para, Brazil from 1986 to 2000; however, the location of Fazenda Hotel Cachoeiras do Rio das Pedras was in Uberlandia, Minas Gerais, Brazil. The distance between Uberlandia, Minas Gerais, and Santana do Araguaia, Para is approximately 675 miles. See http://distancecalculator.globefeed.com/World_Distance_Calculator.asp (last accessed January 12, 2012). The director concluded that it was unlikely that the beneficiary lived in Santana do Araguaia, Para, and worked in Uberlandia, Minas Gerais, between 1996 and 1999.

In response to the 2012 NOIR, the petitioner submitted a declaration dated February 1, 2012 from ██████████ stating that he and the beneficiary are cousins and that the beneficiary lived with him from December 1996 to November 1999 in Uberlandia, Minas Gerais, due to the beneficiary's employment. Based on all of the evidence submitted above, the AAO concludes that it is more likely than not that the beneficiary possessed the minimum experience requirements for the proffered position. Accordingly, the director's finding that the petitioner failed to establish that the beneficiary met the minimum experience requirements is withdrawn.

Nevertheless, the approval of the petition cannot be reinstated because of the following reason.

c. The Petitioner's Ability to Pay.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at

⁵ In Brazil, a company can hire employees, open bank accounts, buy and sell goods only if it has a CNPJ number. Cadastro Nacional da Pessoa Juridica or CNPJ is a unique number given to every business registered with the Brazilian authority; it is similar to Employer Federal Identification Number (FEIN) in the United States. CNPJ database can be accessed online at: http://www.receita.fazenda.gov.br/PessoaJuridica/CNPJ/cnpjreva/Cnpjreva_Solicitacao.asp.

the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d).

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

Here, as noted earlier the ETA Form 750 was accepted for processing by the DOL on April 30, 2001. The rate of pay or the proffered wage specified on the Form ETA 750 is \$12.57 per hour or \$22,877.40 per year based on a 35 hour work week.⁶

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In his April 10, 2009 letter [REDACTED] stated that the beneficiary had worked for his restaurant since 2000, but no evidence (such as Forms W-2 Wage and Tax Statement or 1099-MISC) has been submitted. Therefore the petitioner has not established that it has the ability to pay the proffered wage from the priority date and continuing until the beneficiary receives lawful permanent residence.

Where the petitioner does not establish that it employed and/or paid the beneficiary an amount at least equal to the proffered wage during that period (from the priority date until the beneficiary

⁶ The total hours per week indicated on the approved Form ETA 750 is 35 hours. This is permitted so long as the job opportunity is for a permanent and full-time position. *See* 20 C.F.R. §§ 656.3; 656.10(c)(10). The DOL Memo indicates that full-time means at least 35 hours or more per week. *See* Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994).

ported or until he receives his lawful permanent residence), USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. See *Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 118. "[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these

figures should be revised by the court by adding back depreciation is without support.” *Chi-Feng Chang* at 537 (emphasis added).

The record contains the following evidence to show that the petitioner has the continuing ability to pay \$12.57 per hour or \$22,877.40 per year from April 30, 2001:

- A copy of Form 1120 U.S. Corporation Income Tax Return for 2001.

The petitioner’s tax returns demonstrate its net income (loss) for the years 2001, as shown below:

<i>Tax Year</i>	<i>Net Income (Loss)⁷</i>	<i>Proffered Wage (PW)</i>
2001	\$83,998	\$22,877.40

Therefore, the petitioner has sufficient net income to pay the proffered wage of \$22,877.40 in 2001. However, a review of USCIS electronic databases reveals that the petitioner has previously filed five other immigrant petitions since 1998.⁸ Consistent with 8 C.F.R. § 204.5(g)(2), the petitioner is, therefore, required to establish the ability to pay the proffered wage of the current beneficiary and also of *all* other beneficiaries listed by the director from the date of filing each respective labor certification application until the date each beneficiary including the beneficiary in this instance obtains lawful permanent residence, or until the petition is either withdrawn or revoked.⁹ In addition, the record does not contain the petitioner’s federal tax returns, annual reports, or audited financial statements for 2002 onwards. Hence, we cannot conclude that the petitioner has the ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains his lawful permanent residence.

Finally, USCIS may consider the overall magnitude of the petitioner’s business activities in its determination of the petitioner’s ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612. The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that

⁷ For a C corporation, USCIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return.

⁸ The director in the 2012 NOIR identified those other immigrant petitions (Form I-140) that the petitioner filed for alien beneficiaries other than the beneficiary in the instant case since 1998. The details of those petitions will not be repeated here.

⁹ The director advised the petitioner in the 2012 NOIR to submit copies of the other sponsored beneficiaries’ Forms W-2, 1099-MISC, paystubs, or other documents to show the ability to pay. None was submitted following the director’s 2012 NOIR.

the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

Unlike *Sonegawa*, the petitioner in this case has not shown any evidence reflecting the business' reputation or historical growth. Nor has it included any evidence or detailed explanation of the business' milestone achievements. The record does not contain any newspapers or magazine articles, awards, or certifications indicating the business' accomplishments. Further, no unusual circumstances have been shown to exist to parallel those in *Sonegawa*, nor has it been established that the petitioner during the qualifying period had uncharacteristically substantial expenditures.

In examining a petitioner's ability to pay the proffered wage, the fundamental focus of the USCIS determination is whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). Given that the record does not contain evidence showing that the beneficiary was employed and paid by the petitioner from the priority date, nor does it include the petitioner's tax returns, audited financial statements, or annual reports for the years 2002 and onwards, the AAO is not persuaded that the petitioner has the continuing ability to pay the proffered wage continuously from the priority date until the beneficiary receives lawful permanent residence.

Following the director's certification to the AAO for review, counsel, citing Interoffice Memorandum dated December 27, 2005 from [REDACTED] (HQPRD 70/6.2.8-P) question 1, stated that the petitioner was not required to demonstrate the ability to pay beyond the date of filing of the petition if the adjustment of status application (Form I-485) had been pending for more than 180 days.¹⁰

¹⁰ The record shows that the petitioner concurrently filed the Form I-140 petition and the Form I-485 on October 15, 2002.

We disagree. We note that the AAO is not bound by the 2005 Interoffice Memorandum. Additionally, no evidence of porting pursuant to section 204(j) of the Act has been submitted. Moreover, the beneficiary cannot invoke the portability provision of section 204(j) where the approval of the Form I-140 petition has been revoked for good and sufficient cause, because there would not be a valid, approved petition underlying the request to adjust status to permanent residence by virtue of having ported to the same or similar job. *See Herrera v. USCIS*, 571 F.3d 881 (9th Cir. July 6, 2009) (the Ninth Circuit held that in order to remain valid under section 204(j) of the Act, the I-140 petition must have been valid from the start).

In summary, the director's conclusion that there was fraud or willful misrepresentation involving the labor certification is withdrawn. The director's conclusion that the beneficiary did not possess the minimum qualifications as of the priority date is also withdrawn. Nevertheless, the AAO finds that the director had good and sufficient cause to revoke the approval of the petition. The petitioner has failed to establish by a preponderance of the evidence that the petitioner has the continuing ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence.

Section 205 of the Act, 8 U.S.C. § 1155, states, "The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Where the petitioner of an approved visa petition is not eligible for the classification sought, the director may seek to revoke the approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for good and sufficient cause. Notwithstanding the USCIS burden to show good and sufficient cause in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). The revocation of the previously approved petition is affirmed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 director's decision to revoke the previously approved petition is affirmed.

FURTHER ORDER: The director's decision to invalidate the alien employment certification, Form ETA 750, ETA case number [REDACTED] is withdrawn.