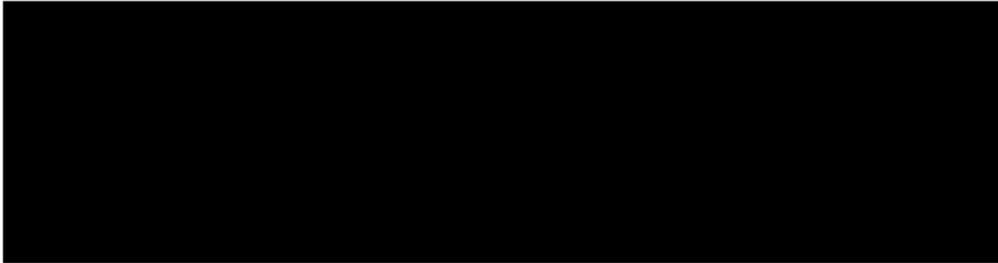


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

Date: **DEC 27 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, noted the automatic revocation of the approval of the employment-based petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, and the matter will be remanded for action and a new decision.

The petitioner is a food market and bakery. It seeks to employ the beneficiary permanently in the United States as a baker. 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 director denied the petition based upon the determination that counsel had provided a letter to the National Visa Center in which he indicated that the beneficiary did not meet the minimum requirements of the proffered job as listed on the labor certification.

On appeal, counsel asserts that he never sent a letter to any governmental branch, agency, or bureau indicating that the beneficiary did not meet the minimum requirements for the proffered job as listed on the labor certification.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (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.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” 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).

The regulations at 8 C.F.R. § 205.2(a) and 8 C.F.R. § 205.2(b) require that United States Citizenship and Immigration Services (USCIS) issue a Notice of Intent to Revoke (NOIR) to a petitioner or self-petitioner in any case that USCIS seeks to revoke the approval of a petition on grounds other than those listed at 8 C.F.R. § 205.1. The regulation at 8 C.F.R. § 205.2(b) states in pertinent part:

The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1).

In the instant case, the director did not issue a NOIR stating the grounds alleged for the revocation of the approval of the petition. Rather, the director issued a Notice of Revocation (NOR) that indicated the revocation of the approval was "automatic" based upon a letter from counsel to the National Visa Center in which he indicated that the beneficiary did not meet the minimum requirements of the proffered job as listed on the labor certification. However, the record does not contain any correspondence from counsel that could be interpreted as supporting the director's finding. Therefore, the AAO will remand the case to the director for further action.

In view of the foregoing, the director's NOR will be withdrawn. The petition is remanded to the director. The director shall review the record to determine whether grounds to revoke the approval of the petition exist. If the director concludes that such grounds exist, a NOIR must be issued to the petitioner. The director may request any additional evidence considered pertinent and allow the petitioner to provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's NOR is withdrawn. The petition is remanded to the director of for further action in accordance with the foregoing and entry of a new decision.