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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: **FEB 07 2012**

Office: VERMONT SERVICE CENTER

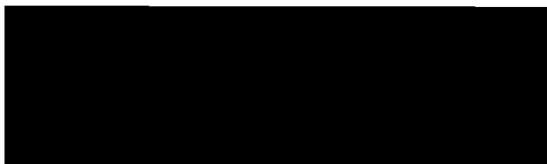


IN RE: Petitioner:
Beneficiary:



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 (AAO) 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. The Field Office Director of the Buffalo, New York district office served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the Officer-in-Charge of the Buffalo, New York district office ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker. The matter was appealed to the Administrative Appeals Office (AAO). The matter will be remanded to the Vermont Service Center.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. 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). As set forth in the notice of revocation, the Field Office Director determined that the beneficiary is ineligible for the benefit sought and, therefore revoked the petition's approval accordingly.

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

Upon review of the record, the AAO has determined that the petition's approval must be revoked by the Vermont Service Center.¹ Therefore, the AAO will remand the case to the director for further action.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director. The director may request any additional evidence considered pertinent. Similarly, the petitioner may 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 decision of the Buffalo, New York district office is withdrawn. The petition is remanded to the director of the Vermont Service Center for further action in accordance with the foregoing and entry of a new decision.

¹ See Memo. from Paul W. Virtue, Executive Associate Commissioner (Acting), Office of Programs, U.S. Immigration & Naturalization Service, to Regional Directors, *et al.*, *Revocation of Employment-Based Petitions (I-140s)* (February 27, 1997), indicating that a petition which is believed by a field office to have been incorrectly approved is to be returned to the service center that approved the petition along with a memorandum of explanation. The service center will then either initiate revocation proceedings or reaffirm the petition and return it to the field office along with a memorandum of explanation for the reaffirmation.