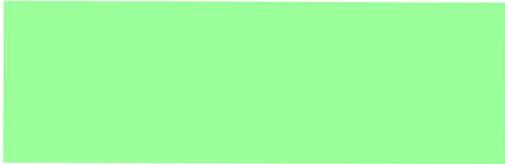


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



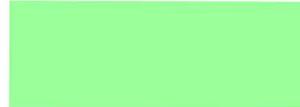
U.S. Citizenship  
and Immigration  
Services

(b)(6)

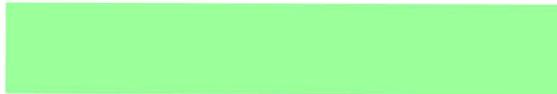


DATE: JUN 05 2012 OFFICE: TEXAS SERVICE CENTER

FILE:

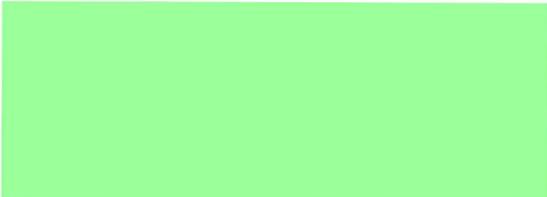


IN RE: Petitioner:  
Beneficiary:



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:



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,

Perry Rhew  
Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The Form I-140, Immigrant Petition for Alien Worker, appears to have been initially approved by the Director, Texas Service Center on November 24, 2008. On December 2, 2008, the director issued a notice of intent to revoke the approval of the petition (NOIR). The director denied the petition on April 8, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

The petitioner describes itself as an apparel contractor. It seeks to permanently employ the beneficiary in the United States as a computer programmer. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is October 21, 2007, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The instant petition was filed on March 5, 2008. On December 3, 2008, the director issued a NOIR. The NOIR states that the petition was approved on November 25, 2008, approximately one week earlier. However, there is no approval notice in the record and the Form I-140 does not contain any physical indication that it had been approved.

On April 8, 2009, the director issued a denial of the petition. The denial does not state that it is a notice of revocation (NOR). There is no mention of a NOIR in the denial, nor is there any mention that an approved petition is being revoked. Instead, the decision states that the petition is being denied.

Counsel's brief submitted with the appeal describes the procedural history of the case, but does not mention any NOIR or revocation of the approval of the petition. Instead, the brief discusses the denial of the petition. It does not appear from the record of proceeding that the petitioner was aware of the approval of the petition or of the issuance of a NOIR.

The internal USCIS database states that the director approved the petition, issued a NOIR, and then denied the petition.

It is not clear from the record whether the appeal before the AAO is an appeal of a denied petition or an appeal of the revocation of an approved petition. If the petition was revoked, it does not appear that proper procedures were followed. Therefore, the appeal will be remanded to the director to clarify whether the petition was denied or approved and then revoked, and to issue a new denial, NOIR or other notice as necessary.

**ORDER:** The appeal is remanded.