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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

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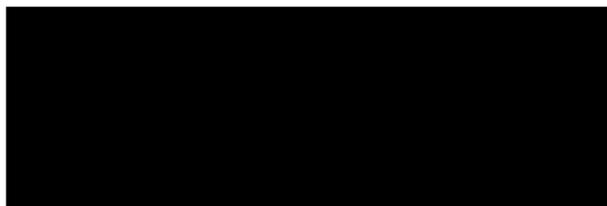
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Date: **MAR 13 2012** Office: TEXAS SERVICE CENTER FILE:

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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On April 15, 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 July 29, 2002. However, the Director of the Texas Service Center (“the director”) revoked the approval of the immigrant petition on May 20, 2009, and the petitioner subsequently appealed the director’s decision. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

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).¹ As required by statute, a labor certification approved by the U.S. Department of Labor (DOL) accompanied the petition. The director determined that the petitioner had failed to demonstrate that it followed the DOL’s recruitment procedures. Accordingly, the director revoked the 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 23, 2011, the AAO issued a Request for Evidence and Notice of Derogatory Information (RFE/NDI) noting that [REDACTED] – the person signing the Form ETA 750 (Application for Alien Employment Certification) and the Form I-140 petition – might not be an authorized representative of the petitioner. In adjudicating the appeal, the AAO found that the petitioning company [REDACTED] located on [REDACTED] in Marlboro, MA appears to have been closed.² The person filing the appeal is [REDACTED] General Manager at [REDACTED]

The AAO in the RFE/NDI advised the petitioner to submit, among other things, evidence showing that the petitioner as currently represented by [REDACTED] had the authority to file the appeal on behalf of the petitioning business.

In response to the AAO’s RFE/NDI, counsel states that she has until now been unable to obtain explicit authorization from the petitioner authorizing the continuation of the proceeding in this matter. According to counsel, [REDACTED] is no longer employed by the petitioner. However,

¹ 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.

² There is no [REDACTED] on [REDACTED] according to [REDACTED] website [REDACTED] last accessed April 27, 2010).

counsel indicates that the appeal should not be rejected since the petitioner has not withdrawn the authorization previously granted to [REDACTED]³

Because the petitioner has failed to respond and provide documentary evidence as requested, we conclude that the appeal was not filed by an authorized person of the petitioning company. Therefore, the appeal must be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

We also find that [REDACTED] did not have the authority to sign and file the Form I-140 petition. In response to the AAO's RFE/NDI [REDACTED] issued a signed statement dated March 23, 2011 stating, among other things, that he sold his business – [REDACTED] located on [REDACTED] [REDACTED] – in 2001 back to [REDACTED]. He also stated that once he sold the business, he was no longer the sponsor (or the petitioner) for the beneficiary.

In support of his assertions, [REDACTED] submitted copies of the following evidence:

- IRS Form 8594, Asset Acquisition Statement Under Section 1060, showing that he sold [REDACTED] [REDACTED] to [REDACTED] on October 9, 2001; and
- IRS Form 4797, Sales of Business Property, showing the ordinary gains of \$526,713 on the sale of [REDACTED]

As noted earlier, the Form I-140 petition was filed and received by the VSC director on April 15, 2002, a few months after [REDACTED] had sold his business to the petitioner. At that point, he no longer was an authorized representative of the petitioning business. The appeal must be rejected for this additional reason.

Since the appeal is rejected, we will not discuss further the issues concerning the petitioner's ability to pay and/or the beneficiary's qualifications for the position offered.

ORDER: The appeal is rejected.

³ We will not presume that [REDACTED] was authorized to file the appeal with the AAO. We sent the Request for Evidence and Notice of Derogatory Information to the petitioner to verify and affirm that the petitioner intends to continue the adjudication of the petition in this matter.