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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Date: MAR 15 2012

Office: TEXAS SERVICE CENTER FILE:



IN RE:

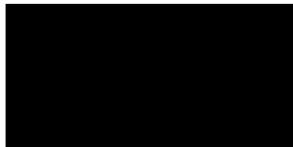
Petitioner:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved on April 16, 2004. On November 15, 2010, the Director, Texas Service Center, issued a Notice of Intent to Revoke (NOIR) the approved petition. The petitioner did not respond to the NOIR, and on January 11, 2011, the director issued a Notice of Revocation (NOR) of Immigrant Petition. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

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 petitioner requests classification of the beneficiary as an skilled worker 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).<sup>1</sup>

As noted above, the director issued a NOIR, informing the petitioner that the beneficiary’s qualifications were in doubt, and offering the petitioner a chance to provide evidence to support the claimed experience. The record contained an employment verification letter from a company that did not appear to be in existence at the time the beneficiary claimed to have been employed there. Additionally, the letter did not support the claim that the beneficiary was a specialty cook, but rather claimed he was a kitchen assistant and later a kitchen supervisor. The petitioner did not respond to the Notice of Intent to Revoke, and the revocation was issued on January 11, 2011.

The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for “good and sufficient cause” when the evidence of record at the time of issuance, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The director’s NOIR sufficiently detailed the evidence of the record, pointing out discrepancies and possible misrepresentations concerning the beneficiary’s experience, that would warrant a denial if unexplained and un rebutted, and thus was properly issued for good and sufficient cause.

Former counsel filed the instant appeal on January 27, 2011. On appeal, former counsel asserts ineffective assistance of prior counsel.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> Although counsel who submitted the brief on appeal has withdrawn from representing the petitioner, the allegations of ineffective assistance in former counsel’s letter accompanying the appeal addresses three previous attorneys and a “notario.”

A claim based upon ineffective assistance of counsel requires the affected party to, *inter alia*, file a complaint with the appropriate disciplinary authorities or, if no complaint has been filed, to explain why no complaint was filed. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *affd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988). The petitioner is also required to explain the facts surrounding the preparation of the petition or the engagement of the representative. *Id.* Accordingly, the petitioner did not provide necessary evidence to carry its burden for an ineffective assistance of counsel claim under *Lozada*.

Former counsel also asserts on appeal that the United States Citizenship and Immigration Service (USCIS) engaged in “wrongful assertion of facts without legal basis.” In an attempt to establish error, the petitioner submitted new evidence on appeal consisting of a letter from an attorney describing business practices in Brazil,<sup>3</sup> and declarations from a previous owner of a business which purportedly employed the beneficiary.<sup>4</sup>

<sup>3</sup> In both the NOIR and NOR, the director mentions that the beneficiary claimed experience with a business that did not appear to be in existence in 1984. The petitioner asserts that the business was in existence, and provides a letter which describes changes to Brazilian corporate law and regulation starting with a new constitution in 1988. The letter submitted by the petitioner does not discuss the relevant time period, and fails to explain how the evolution of Brazilian corporate law post 1988 is relevant to law prior to that date.

<sup>4</sup> The new letter submitted on appeal from [REDACTED] states that the beneficiary was employed as a kitchen assistant from March 4, 1985, the date the restaurant opened to the public, until May 1985. The letter also states that the beneficiary was promoted to the position of kitchen supervisor in May 1985, and worked until his dismissal on September 3, 1985. This letter contradicts the dates of employment with [REDACTED] as asserted in the letter provided with the initial petition. That letter states the beneficiary’s dates of employment as March 1, 1985 to September 30, 1988. These inconsistencies raise doubts concerning the beneficiary’s qualifications for the offered position. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, the letter provided on appeal does not meet the regulatory prescribed evidence of 8 C.F.R. § 204.5(1)(3). That regulation states:

(ii) *Other documentation*—

(A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or

The purpose of the NOIR is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry or rebut USCIS concerns shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's NOIR. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO “shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

**ORDER:** The appeal is summarily dismissed.

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experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The letters provided do not provide a description of the beneficiary's experience sufficient to establish that the beneficiary has the required two years of work experience as a specialty cook.

On appeal, former counsel also states that the beneficiary has been employed with the petitioner as a cook since December 1998, and therefore gained more than the required two years of experience as a specialty cook with the petitioner. No regulatory prescribed evidence of the beneficiary's experience with the petitioner was submitted to meet the requirements of 8 C.F.R. 204(i)(3). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).