

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

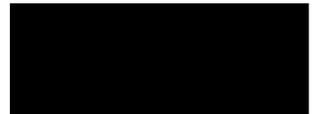


B6

DATE: NOV 01 2012

OFFICE: TEXAS SERVICE CENTER

FILE:



PETITIONER:
BENEFICIARY:



ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, (director) revoked the employment-based immigrant visa petition. The matter 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)(I).

The petitioner describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as a cook. 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).

As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. This petition was approved on May 29, 2002 by the Vermont Service Center, but that approval was revoked on May 20, 2009. The director determined that the petitioner failed to follow the U.S. Department of Labor (DOL) recruitment procedures in connection with the approved labor certification application and that the documents submitted in response to the director's Notice of Intent to Revoke (NOIR) were in themselves a willful misrepresentation of material facts, constituting fraud. The director also questioned whether the beneficiary possessed the minimum experience requirements as stated on the labor certification application prior to the filing of the Form ETA 750. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.1.

The record of proceeding contains an executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the beneficiary's representative.¹ The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal.

There is no evidence in the record that the petitioner consented to the filing of the appeal.

Further, according to the Commonwealth of Massachusetts, Corporations Division, website <http://corp.sec.state.ma.us/corp/corpsearch/corpsearchinput.asp>, (accessed on September 28, 2012), the petitioner's status was involuntarily dissolved in 2007. If the petitioner is no longer in business, then no *bona fide* job offer exists, and the petition and appeal are therefore moot. Even if the appeal could be otherwise sustained, the approval of the petition would be subject to automatic revocation due to the termination of the petitioner's business. See 8 C.F.R. § 205.1(a)(iii)(D).

As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

ORDER: The appeal is rejected.

¹ The AAO notes that it contacted the beneficiary's counsel, [REDACTED] several times and left voicemails on his office answering machine, to request a Form G-28 executed on behalf of the petitioner, if [REDACTED] was authorized to represent the petitioner. [REDACTED] never returned the AAO calls or submitted the Form G-28 on behalf of the petitioner.