



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

B6

DATE: Office: TEXAS SERVICE CENTER FILE: [REDACTED]  
OCT 23 2012

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:  
[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks the beneficiary's classification as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The petition was accompanied by an approved Application for Permanent Employment Certification, ETA Form 9089 from the Department of Labor (DOL). The director determined that the petitioner filed the petition without sufficient evidence relevant to the priority date derived from a previously filed labor certification. The director also concluded that the petitioner had failed to establish that it had the continuing ability to pay the proffered wage and that the beneficiary possessed the required work experience set forth in the labor certification, and denied the petition, accordingly.

Review of USCIS records indicates that, subsequent to the filing of the instant petition and appeal, on October 9, 2012, DOL revoked the certification of the ETA Form 9089 pursuant to the regulation at 20 C.F.R. § 656.32. DOL issued a Notice of Revocation, which provides in relevant part:

The Department sent the employer *Notice of Intent to Revoke* (Notice) on May 11, 2012. The employer was provided the employer 30 days from May 11, 2012, in which to submit rebuttal evidence, however, to date, the Department has not received a response from the employer. (sic) Because the employer did not file rebuttal evidence within the 30 days as permitted by the regulations, the *Notice of Intent to Revoke* became the final decision of the Secretary, and therefore, in accordance with the Department's regulations at 20 C.F.R. § 656.32(b)(2), the certification is revoked.

In this matter, section 203(b)(3)(A)(i) of the Act 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, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. However, the petition must be accompanied by an individual labor certification approved by the Department of Labor. *See* 8 C.F.R. § 204.5(1)(3). Because this labor certification has been revoked, the petition is not supported by a valid labor certification, and further pursuit of the matter at hand is moot.

**ORDER:** The appeal is dismissed based on DOL's revocation of certification of the ETA Form 9089, as the petition is no longer supported by a valid labor certification.