

(b)(6)

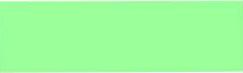
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

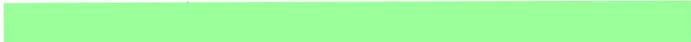


U.S. Citizenship
and Immigration
Services



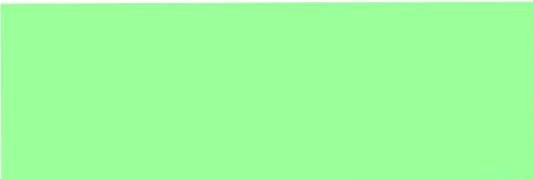
DATE: **SEP 13 2012** OFFICE: TEXAS SERVICE CENTER

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-140, Immigrant Petition for Alien Worker, appears to have been initially approved by the Director, Texas Service Center on June 12, 2008. On August 13, 2008, the director issued a Request for Evidence (RFE). The director denied the petition on May 20, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

The petitioner describes itself as an ice cream store. It seeks to permanently employ the beneficiary in the United States as a supervisor. 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 22, 2004, 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 August 15, 2007. On August 13, 2008, the director issued a request for evidence (RFE). In response to the RFE, the petitioner provided a copy of Form I-797, Notice of Action, dated June 12, 2008 which states that the petition had been approved. The Form I-140 in the record does not contain any physical indication that it had been approved.

On May 20, 2009, the director issued a denial of the petition. The denial does not indicate that it is a notice of revocation (NOR). There is no mention of a notice of intent to revoke (NOIR) in the denial, nor is there any mention that an approved petition is being revoked.

The internal U.S. Citizenship and Immigration Services database states that the director approved the petition, issued an RFE, and then denied the petition.

Therefore, it is not clear from the record whether the appeal before the AAO is an appeal of a denied petition or an appeal of a revocation of an approved petition. If the petition was approved, then it does not appear that the director followed proper procedures to revoke its approval.

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.