



**U.S. Citizenship
and Immigration
Services**

(b)(6)

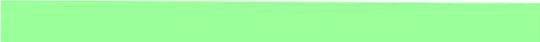


Date: **JUN 06 2013**

Office: TEXAS SERVICE CENTER

FILE: 

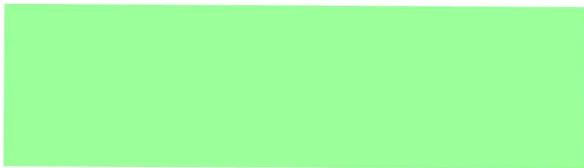
IN RE:

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 BENEFICIARY:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a stylized flourish below it.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the director of the Texas Service Center (director). The director subsequently invalidated the labor certification and revoked the approval of the Form I-140 petition. Pursuant to 8 C.F.R. § 103.5(a)(5)(i), the Administrative Appeals Office (AAO) is reopening reopened the matter *sua sponte* and withdrawing the director's decision to invalidate the labor certification and revoke the approval of the petition. The matter will be remanded to the director.

The petitioner is a hotel. It seeks to employ the beneficiary permanently in the United States as a general clerk. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director concluded that the application for labor certification involved willful misrepresentation. The director then invalidated the labor certification and revoked the petition's approval accordingly.

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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The director invalidated the labor certification based on a finding of willful misrepresentation of material fact. This finding was based on derogatory information in the record from a previously filed Form I-130 petition for the beneficiary's husband and a Form I-140 petition filed by a separate employer. Pursuant to 8 C.F.R. § 103.2(b)(16)(i), if the director's findings are based on derogatory information in the record of which the petitioner is unaware, the petitioner must be notified and given a chance to respond. The director failed to notify the petitioner of the derogatory information and to afford the petitioner an opportunity to respond and rebut the findings, as required by the regulations at 8 C.F.R. § 103.2(b)(16)(i).¹ As such, the director's decision to invalidate the labor certification, without giving the petitioner due notice of derogatory information, and the resulting revocation of the petition's approval, are procedurally erroneous and will be withdrawn.

¹ Alternatively, the director could have issued a notice of intent to revoke the petition's approval (NOIR). However, the director did not issue such a notice.

In view of the foregoing, the petition is remanded to the director. The director may choose to reopen the instant case and initiate revocation proceedings.² The director may also request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director may review the entire record and enter a new decision.

ORDER: The director's decision to invalidate the labor certification [REDACTED] and to revoke the approval of the petition is withdrawn. The petition is remanded to the director of for further action in accordance with the foregoing.

² The AAO notes that the petition is not approvable as filed, given the petitioner's failure to disclose the familial relationship between the petitioner's owner and the beneficiary. There are also deficiencies in the record concerning the beneficiary's claimed prior experience.