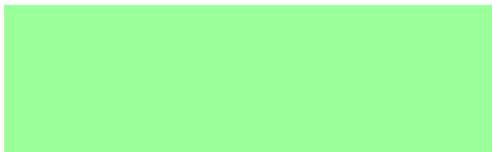




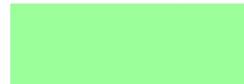
U.S. Citizenship
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Services

(b)(6)

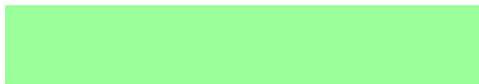


Date: JUN 10 2013 Office: TEXAS SERVICE CENTER

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 PETITIONER:

SELF REPRESENTED

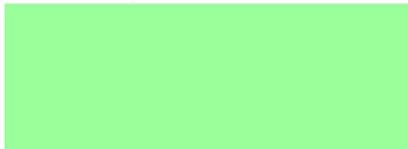
INSTRUCTIONS:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

Cc:



DISCUSSION: On February 10, 2003, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on December 1, 2003. The director of the Texas Service Center (the director), however, revoked the approval of the immigrant petition on August 25, 2010. The AAO notes that the Form I-290B, Notice of Appeal or Motion, was filed in this case by an unaffected party, i.e. the beneficiary, on September 22, 2010. Thus, that appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).¹ However, pursuant to 8 C.F.R. § 103.5(a)(5)(i), the Administrative Appeals Office (AAO) will reopen the matter *sua sponte* and withdraw the director's revocation of the approval of the petition.

The petitioner describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as a cook 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).² As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. As stated earlier, this petition was approved on December 1, 2003 by the VSC, but that approval was revoked in August 2010. The director determined that petitioner did not demonstrate that it followed recruitment guidelines and that the petitioner failed to submit requested documents concerning the beneficiary's prior experience. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.2.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security (DHS)], may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by her 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 threshold issue on appeal is whether the director adequately advised the petitioner of the basis for revocation of approval of the petition. As noted above, the Secretary of DHS has the authority to revoke the approval of any petition approved by her under section 204 for good and sufficient cause. *See* section 205 of the Act; 8 U.S.C. § 1155. This means that notice must be provided to the petitioner before approval of a petition can be revoked. Upon review of the entire record, including evidence submitted on appeal, the AAO concludes that notice was not provided to the petitioner regarding the basis for revocation of the approval.

¹ Counsel for the beneficiary is being provided a courtesy copy of the decision.

² Section 203(b)(3)(A)(i) of 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.

Another issue raised on appeal is whether the director properly concluded that the petitioner did not comply with the recruitment procedures of the DOL. The director indicated that the petitioner did not conduct good faith recruitment. The AAO disagrees. The record does not show inconsistencies or anomalies in the recruitment process that would justify the issuance of a Notice of Intent to Revoke based on the criteria of *Matter of S & B-C-*, 9 I&N Dec. 436, 447 (A.G. 1961). Therefore, the director's conclusion that the petitioner did not comply with DOL requirements is withdrawn.

The director also noted in his decision certain discrepancies with the evidence submitted to verify the beneficiary's prior experience. The director stated that the petition's approval was not being revoked on this basis. We concur that the evidence of the beneficiary's prior experience does not show inconsistencies or anomalies. *Id.*

In this case, the AAO finds that the director did not have good and sufficient cause to revoke the approval of the petition, as required by section 205 of the Act, 8 U.S.C. § 1155. We withdraw the director's finding that the petitioner did not conduct good faith recruitment in advertising for the proffered position resulting in the approval of the labor certification application.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The approval of the petition is reinstated.