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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAR 0 4 2013 Office: NEBRASKA 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Nebraska Service Center (the director), on September 25, 2008. However, the director later revoked the approval of the immigrant petition and invalidated the labor certification on April 20, 2011. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). Upon review, the director's decisions to revoke the approval of the petition and to invalidate the labor certification will be withdrawn, and the approval of the petition will be reinstated.

The petitioner is a retail store. It seeks to employ the beneficiary permanently in the United States as an assistant retail store manager 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).[1] As required by statute, the petition is submitted along with an approved Form ETA 750 Alien Employment Certification, approved by the United States Department of Labor (DOL). As noted above, the petition was initially approved, but the approval was later revoked and the labor certification was invalidated. The director determined that the beneficiary did not have the requisite work experience in the job offered before the priority date, and that the petitioner failed to establish that the job offer was *bona fide*, that the petitioner and the beneficiary are related by blood.

On appeal, counsel for the petitioner contends that the director's decision to revoke the approval of the petition was arbitrary, irrational, and not in accordance with the law.

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

Upon review of the entire record, including evidence submitted on appeal, the AAO concludes that the record does not show inconsistencies or anomalies in the recruitment process that would justify the issuance of a Notice of Intent to Revoke (NOIR) based on the criteria of *Matter of S & B-C-*, 9 I&N Dec. 436, 447 (A.G. 1961). Similarly, there has been an insufficient development of the facts upon which the director can make a determination of fraud or willful misrepresentation in connection with the labor certification process and invalidate the labor certification. *Id.*

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is December 30, 2003, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). Here, the petitioner has established that it is more likely than not that the

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[1] 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.

beneficiary had all the education, training, and experience specified on the Form ETA 750 as of December 30, 2003. The AAO also finds that the petitioner has established its ability to pay the proffered wage from the priority date onwards.

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 appeal is sustained, the director's decision to revoke the approval of the petition is withdrawn, and the petition's approval is reinstated.

FURTHER ORDER: The decision to invalidate the alien employment certification, Form ETA 750, ETA case number P-05223-02190, is withdrawn.