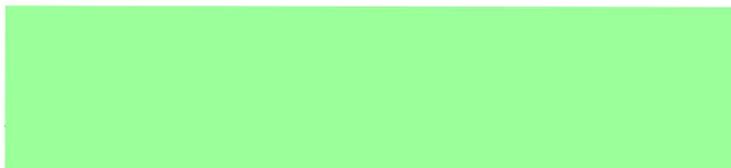




U.S. Citizenship
and Immigration
Services

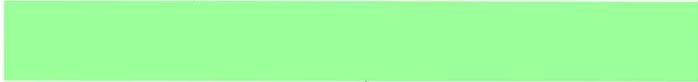
(b)(6)



Date: **NOV 25 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), initially approved the preference visa petition. On February 23, 2009, the petitioner requested that the petition be withdrawn. The director of the Texas Service Center (the director), revoked the approval of the immigrant petition on March 23, 2009, and the petitioner subsequently appealed the director's decision to revoke the petition's approval. The AAO dismissed the appeal as moot based on the request to withdraw the approved petition that was received before the director's revocation. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition's approval will remain withdrawn.

The petitioner is an assisted living facility. It seeks to employ the beneficiary permanently in the United States as a mental retardation aide pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director determined that the petitioner failed to follow the U.S. Department of Labor (DOL) recruitment procedures in connection with the approved labor certification application and failed to establish that the beneficiary possessed the minimum requirements on the ETA 750 prior to the date of the filing of the labor certification application. Therefore, the director revoked the approval of the petition on March 23, 2009.

On February 27, 2009, USCIS received a letter from [REDACTED] the petitioner's Executive Director, withdrawing the petition and indicating that the petitioner no longer employed the beneficiary. In the letter, dated February 23, 2009, the petitioner stated "we withdraw all representation and interest in this petition." The regulations at 8 C.F.R. § 205.1(a)(iii)(C) provide that the approval of the petition is automatically revoked "upon written notice of withdrawal filed by the petitioner...with any officer of [USCIS] who is authorized to grant or deny petitions." Therefore, the petition was automatically revoked when it was received by USCIS on February 27, 2009, regardless of whether USCIS acted upon it.¹

As stated in the prior decision, 8 C.F.R. § 103.2(b)(6) states that a petitioner can withdraw an approved petition up until the beneficiary's adjustment of status to permanent residence. This withdrawal may not be retracted. On motion, the petitioner submitted a letter from the beneficiary stating that he attempted to obtain additional evidence of his prior work experience, that he has continuously worked for the petitioner, and that the withdrawal letter was sent in error. The petitioner also submitted a letter from [REDACTED] Administrator, [REDACTED] dated October 16, 2012, stating that the beneficiary transferred campuses, leading to a misunderstanding about his employment when the withdrawal letter was sent.

¹ The regulation at 8 C.F.R. § 205.1(b) states that USCIS shall send a notice of automatic revocation to the petitioner when it appears that an automatic revocation provision has been triggered. This notice is not a requirement to perfect the automatic revocation. The automatic revocation occurred by operation of law when USCIS received the petition's approval by the petitioner.

² As in the letter sent from Mr. [REDACTED] on appeal, the instant letter, Mr. [REDACTED] claims that [REDACTED] owns the petitioner and that [REDACTED] intends to employ the beneficiary in its [REDACTED]

As stated in the previous AAO decision, the petitioner's February 2009 withdrawal resulted in an automatic revocation of the petition which predates the director's March 23, 2009 revocation. Accordingly, the director's decision to revoke the petition was withdrawn and the issues in this proceeding are moot.

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 not met that burden.

ORDER: The motion to reopen is granted, the previous AAO decision is affirmed, and the petition remains withdrawn.

Massachusetts location. The petitioner has submitted no evidence that [REDACTED] is its successor-in-interest or otherwise has standing in these proceedings. In any further submissions, the petitioner should submit evidence that Salmon is a successor-in-interest pursuant to *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). Failure to provide such evidence of a successor relationship may result in the dismissal of further filings as being filed by an unaffected party.