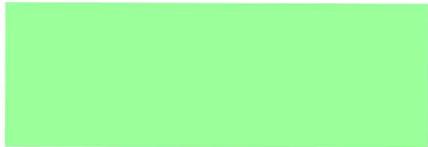


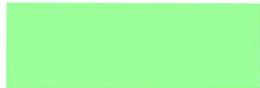


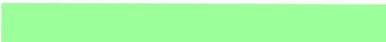
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



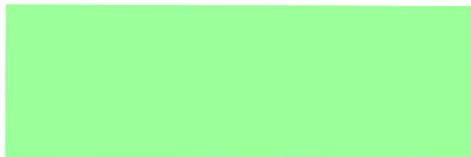
Date: **OCT 03 2013**

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:



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.

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was initially approved by the director of the Vermont Service Center. The director of the Texas Service Center sent the petitioner and counsel a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter was appealed to the Administrative Appeals Office (AAO). On December 5, 2012, the AAO withdrew the director's decision and remanded the matter to the director for further action. On February 14, 2013, the director sent a second NOIR and allowed the petitioner 30 days in which to respond. Having received no response, the director revoked the approval of the petition and certified the decision to the AAO. The matter will be again remanded to the director.

The petitioner is a resort condominium. It seeks to employ the beneficiary permanently in the United States as a maintenance repairer. 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). As set forth in the May 12, 2009 NOR, the director stated that the petitioner had not responded to the NOIR and determined that the petitioner had not demonstrated its compliance with DOL advertising and recruiting requirements. The director revoked the petition's approval accordingly. The director also concluded that the application for labor certification involved willful misrepresentation.

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).

Upon review of the record, the AAO has determined that neither the petitioner nor counsel received the February 14, 2013 NOIR, and thus were not afforded an opportunity to respond. Therefore, the AAO will remand the case to the director for re-issuance of the NOIR and a decision based on any response submitted.

In view of the foregoing, the director's July 18, 2013 NOR will be withdrawn. The petition is remanded to the director. The director may re-issue the same NOIR or a different one based on different evidence. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

(b)(6)

*NON-PRECEDENT DECISION*

Page 3

**ORDER:** The director's July 18, 2013 NOR is withdrawn. The petition is remanded to the director of for further action in accordance with the foregoing and entry of a new decision.