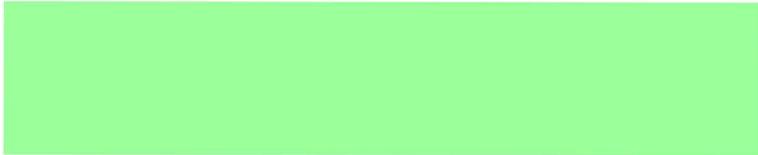


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

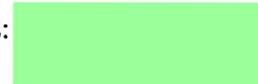


U.S. Citizenship
and Immigration
Services



DATE OCT 07 2013 OFFICE: TEXAS SERVICE CENTER

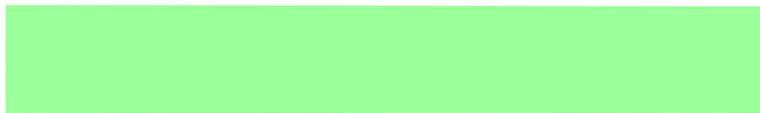
FILE:



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:

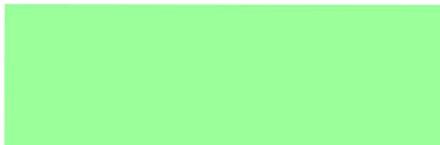
Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in cursive script, appearing to read "Elizabeth McCormick".

Ron Rosenberg
Chief, Administrative Appeals Office

CC:



DISCUSSION: The employment-based visa petition was initially approved by the Vermont Service Center director on March 5, 2003. The director of the Texas Service Center (the director), however, revoked the approval of the petition on September 22, 2010. The Administrative Appeals Office (AAO) dismissed the subsequent appeal on January 28, 2013. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed as improperly filed. Upon further review, however, the AAO reopens the case on its own motion. The AAO's January 28, 2013 decision and the director's decision to revoke the approval of the petition will be withdrawn and the approval of the petition will be reinstated.

The petitioner describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as a cook. The petitioner requests classification of the beneficiary as a skilled worker or professional pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. This petition was approved on March 5, 2003 by the Vermont Service Center, but that approval was revoked on September 22, 2010. The director determined that the petitioner failed to demonstrate that the beneficiary possessed the minimum experience requirements as stated on the labor certification application prior to the filing of the Form ETA 750 and that it complied with the Department of Labor recruitment requirements. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.2.

The AAO concluded that the petitioner demonstrated that the beneficiary had the requisite work experience as set forth by the labor certification. However, beyond the director's decision, the AAO upheld the revocation of the approval of the petition based on the petitioner's failure to demonstrate that it has the continuing ability to pay the beneficiary the proffered wage, that the appellant was the successor-in-interest, and that the beneficiary was eligible to port under the provisions of American Competitiveness in the Twenty-First Century Act of 2000 (AC21).

signed the Form I-290B, Notice of Appeal or Motion, as the petitioner's attorney. The record, however, did not contain a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by both the attorney and the petitioner.

In accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." (Emphasis added). This

¹ 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.

regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

Without a new, fully executed Form G-28 authorizing the attorney to represent the petitioner, the AAO cannot consider the motions to have been properly filed as required by 8 C.F.R. § 103.3(a)(2)(v)(A)(2) and its subclauses. A notice was sent to the attorney on May 7, 2013. On May 21, 2013, [REDACTED] notified the AAO through a letter, stating that the attorney's office was not able to obtain "the requested evidence." As the attorney failed to submit this required document, the motions will therefore be dismissed as improperly filed, under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The AAO, however, reopens the case on its own motion. The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The director revoked the approval of the petition after concluding that the petitioner failed to demonstrate that the beneficiary possessed the minimum experience requirements as stated on the labor certification application prior to the filing of the Form ETA 750 and that it complied with the Department of Labor recruitment requirements. Upon further review, the AAO concludes that the evidence in the record warrants the reinstatement of the approval of the petition.

ORDER: The motions are dismissed as improperly filed. The AAO reopens the case on its own motion. The AAO's January 28, 2013 decision and the director's decision to revoke the approval of the petition are withdrawn. The approval of the petition is reinstated.