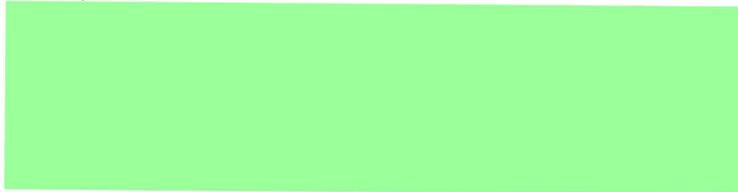


(b)(6)

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



U.S. Citizenship
and Immigration
Services



DATE: **APR 08 2014**

OFFICE: TEXAS SERVICE CENTER

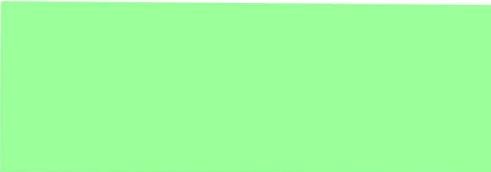
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or a 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 (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,

John F. Fox

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center (TSC director). The approval of the petition was subsequently revoked by the Cleveland Field Office Director (CFO director), and the petitioner filed an appeal. The appeal was rejected by the Chief, Administrative Appeals Office (AAO), as late filed, and returned to the CFO director for a determination of whether it merited reopening or reconsideration. The CFO director issued another decision which reviewed the entire record, including evidence submitted in support of the appeal, before denying the motion to reopen or reconsider and leaving the original revocation decision undisturbed. The petitioner filed another appeal, which is currently before the AAO. The case will be remanded to the TSC director.

The petitioner describes itself as a market/convenience store. It seeks to employ the beneficiary permanently in the United States as a night shift manager and to classify him as a skilled worker 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). This statutory provision 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. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL).

The CFO director's decision to revoke the approved petition was based on section 204(c) of the Act, which prohibits the approval of any visa petition to an alien who is found to have entered into a marriage with a U.S. citizen for the sole purpose of evading U.S. immigration laws.

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 record, the AAO has determined that the CFO director did not have jurisdiction to revoke the petition approved by the TSC director. Only the Texas Service Center has such jurisdiction.¹ Therefore, the AAO will remand the case to the TSC director for further action.

Accordingly, the CFO's revocation decision will be withdrawn. The petition will be remanded to the Texas Service Center. The TSC director may request any additional evidence considered pertinent. The petitioner may provide additional evidence within a reasonable period of time to be determined

¹ See Memo. from Paul W. Virtue, Executive Associate Commissioner (Acting), Office of Programs, U.S. Immigration & Naturalization Service, to Regional Directors, *et al.*, *Revocation of Employment-Based Petitions (I-140s)* (February 27, 1997), indicating that a petition which is believed by a field office to have been incorrectly approved is to be returned to the service center that approved the petition along with a memorandum of explanation. The service center will then either initiate revocation proceedings or reaffirm the petition and return it to the field office along with a memorandum of explanation for the reaffirmation.

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NON-PRECEDENT DECISION

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by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The decision of the Cleveland Field Office Director revoking the approval of the petition is withdrawn. The petition is remanded to the Texas Service Center Director for further action in accordance with the foregoing discussion and the entry of a new decision.