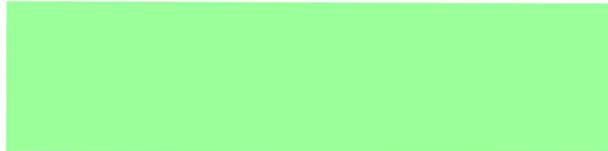


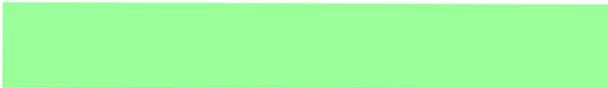


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 25 2014 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)

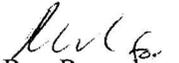
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, (director) revoked the approval of the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The case will be remanded for further action.

The petitioner describes itself as a sandwich/submarine shop. It sought to permanently employ the beneficiary in the United States as a baker. The petitioner requested 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). The director initially approved the petition on March 29, 2007. On December 6, 2013, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition, providing the petitioner with an opportunity to overcome derogatory information concerning its operations and the beneficiary's claimed experience. The director ultimately revoked the approval of the petition based on the petitioner's failure to respond to the NOIR.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The record shows that on December 6, 2013, the director's Notice of Intent to Revoke (NOIR) was mailed to counsel for the petitioner at [REDACTED]. However, this mailing was returned by the United States Postal Service, which marked the envelope, "RETURN TO SENDER ATTEMPTED -NOT KNOWN UNABLE TO FORWARD." It is unclear from the record whether the NOIR was mailed to the petitioner. Counsel indicates on appeal that neither he nor the petitioner has reviewed the NOIR.

We note that the NOIR was not properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The director's NOIR sufficiently detailed the evidence of the record that would warrant a denial if unexplained and un rebutted, specifically pointing out that the petitioner's restaurant does not bake its own bread or cookies and that the restaurant at which the beneficiary claimed to have gained the required experience for the offered position did not have gas lines or equipment to make bakery products. Although the notice

¹It is noted that counsel confirmed this was a correct address on a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed on April 7, 2014; however, counsel incorrectly entered his address on the Form G-28 as [REDACTED]

Further, on the Form I-290B, Notice of Appeal, signed on April 7, 2014, counsel lists a post office box with a ZIP code of [REDACTED]. Counsel's letterhead and entries on the Form I-140 petition and a March 12, 2007, Form G-28 show that counsel's correct suite number was "Suite A," not "SUIT" as was entered on the newest Form G-28, and that the correct ZIP code is [REDACTED]

was properly issued for good and sufficient cause, the record is unclear as to whether either the petitioner or the petitioner's counsel received the NOIR.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for re-issuance of a Notice of Intent to Revoke. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded for further action in accordance with the foregoing and entry of a new decision.