



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 27 2015**

OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE:

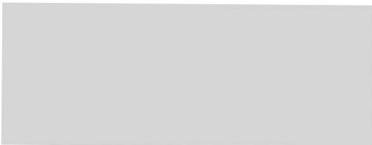
Petitioner:

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:

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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Texas Service Center. The director served the petitioner with 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 visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director.

The petitioner is a truck part supply company. It seeks to employ the beneficiary permanently in the United States as a diesel mechanic. The petitioner seeks to classify the beneficiary as an alien worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker or professional.¹ The petition was initially approved by the director on August 31, 2006. However, after the approval of the petition, the director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition, and that the petitioner had not established the beneficiary's required work experience. The director issued the NOIR on November 23, 2009 and the petitioner provided a timely response. The director revoked the approval of the instant petition accordingly on April 16, 2013.

We maintain 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). Our *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).

Review of U.S. Citizenship and Immigration Services (USCIS) records indicates that, subsequent to filing the instant petition, on May 25, 2007 the beneficiary filed a Form I-485 Application to Adjust Status, receipt number [REDACTED] which was approved on December 25, 2011, prior to the director's revocation of the I-140 petition's approval.

Upon review of the record, we have determined that the petitioner properly responded to the NOIR, and the petitioner's response was not fully considered by the director in the NOR. Further, the director did not consider the beneficiary's adjustment to lawful permanent resident status in the final revocation. Therefore, we will remand the case to the director for further review and action.

In view of the foregoing, the director's NOR will be withdrawn. The petition is remanded to the director. 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.

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. Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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NON-PRECEDENT DECISION

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