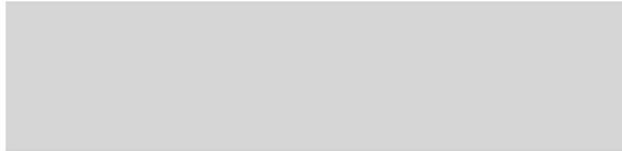


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 01 2015**

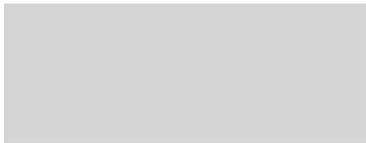
FILE: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition on December 18, 2001. On April 3, 2009, the Director, Texas Service Center, issued a Notice of Intent to Revoke (NOIR) the approval of the Form I-140, and on June 10, 2009, after considering the petitioner's response to the NOIR, the director revoked the approval of this petition. The petitioner appealed the matter to the Administrative Appeals Office (AAO), and on September 28, 2011, we withdrew the director's decision and remanded the matter for issuance of a new decision. On May 4, 2012, the director issued a new decision and certified the matter to us for review. On August 21, 2012, we affirmed the director's decision in part, and withdrew it in part. We reopen the instant matter sua sponte on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision.¹ Upon further review of the matter, the petition will be sustained. The director's decision will be withdrawn, and the approval of the petition will be reinstated.

The petitioner is a bakery that filed the Form I-140 petition to employ the beneficiary permanently in the United States as a baker. The petition was accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).²

The director initially revoked the petition on June 10, 2009. On September 28, 2011, we remanded the matter to the director primarily because the petitioner had not been given proper notice of the intent to revoke the approval of the instant petition.

In issuing a new decision and certifying the matter to us for review on May 4, 2012, the director determined that the evidence in the record does not establish: (1) that the petitioner conducted good faith recruitment in advertising for the instant position; (2) that the beneficiary met the experience requirements of the labor certification; and (3) that the petitioner had the ability to pay the beneficiary's proffered wage from the priority date onward. For these reasons, the director revoked the approval of the instant petition.

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

¹ The regulation at 8 C.F.R. § 103.5(a)(5)(ii) states:

Service motion with decision that may be unfavorable to affected party. When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

² This petition involves the substitution of the labor certification beneficiary. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. *See* 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since another beneficiary has not been issued lawful permanent residence based on the labor certification, the requested substitution was permitted.

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).

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The petitioner must also establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

Upon review of the entire record, we conclude that the petitioner has overcome the grounds of revocation. Accordingly, the approval of the petition is reinstated under section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), and the director's invalidation of the labor certification is withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: We withdraw our decision of August 21, 2012. The approval of the petition is reinstated.