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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  
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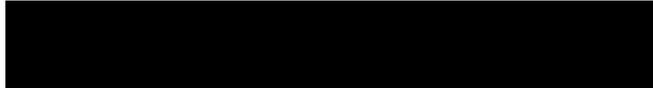


**MAR 13 2012**

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** On December 9, 2002, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the VSC director on December 16, 2003. However, the Director of the Texas Service Center (“the director”) revoked the approval of the immigrant petition on March 2, 2009, and the petitioner subsequently appealed the director’s decision. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a pastry and coffee shop.<sup>1</sup> It seeks to permanently employ the beneficiary in the United States as a baker 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).<sup>2</sup> As required by statute, the petition is submitted along with an approved Application for Alien Employment Certification (Form ETA 750). As noted above, the petition was initially approved in December 2003, but the approval was revoked in March 2009. The director concluded that the beneficiary did not have the requisite work experience in the job offered in Brazil before the priority date.

On appeal to the AAO, current counsel for the petitioner contends that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary worked as a baker in Brazil for at least two years and that he is qualified to perform the duties of the position. For this reason, counsel indicates that the director did not have good and sufficient cause to revoke the approval of the petition.<sup>3</sup>

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>4</sup>

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<sup>1</sup> The petitioner operates a Dunkin’ Donuts.

<sup>2</sup> Section 203(b)(3)(A)(i) of 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.

<sup>3</sup> Current counsel, [REDACTED], will be referred to as counsel throughout this decision. Previous counsel, [REDACTED] will be referred to as previous or former counsel or by name. [REDACTED] was suspended from practice of law before the Immigration Courts, Board of Immigration Appeals (BIA), and Department of Homeland Security (DHS) for a period of three years from March 1, 2012 to February 28, 2015.

<sup>4</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

## 1. Good and Sufficient Cause

As a threshold matter, it is important to address whether the director adequately advised the petitioner of the basis for revocation of approval of the petition and whether the director's decision to revoke the approval of the petition was based on good and sufficient cause, as required by section 205 of the Act, 8 U.S.C. § 1155.

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 [she] deems to be good and sufficient cause, revoke the approval of any petition approved by her 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).

Before revoking the approval of any petition, however, the director must provide notice. The regulation at 8 C.F.R. § 205.2 reads:

(a) *General.* Any [USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition **upon notice to the petitioner** on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of this [USCIS]. (Emphasis added).

Further, the regulation at 8 C.F.R. § 103.2(b)(16) states:

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

Moreover, *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987) provide that:

A notice of intention to revoke the approval of 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. However,

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The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

where a notice of intention to revoke is based upon an unsupported statement, revocation of the visa petition cannot be sustained.

Here, the director noted in the Notice of Intent to Revoke (NOIR) dated September 3, 2008 that the beneficiary could not have worked [REDACTED] from March 12, 1997 to December 12, 1999 as a baker because the business [REDACTED] was not registered with the Brazilian authority until October 22, 1998.<sup>5</sup>

In response to the director's NOIR, the petitioner's previous counsel stated that [REDACTED] where the beneficiary worked from March 1997 to December 1999 was originally started in 1990 by [REDACTED] that in February 1997 [REDACTED] sold the business to [REDACTED], and that [REDACTED] continued [REDACTED] business until the transfer of ownership was complete. [REDACTED] further stated that [REDACTED], once she fully owned the business, was required to re-register the business under her own name with the Brazilian authority and obtain a new CNPJ number.

To demonstrate that Invipa Company was owned by [REDACTED] before it was registered with the Brazilian authority on October 22, 1998, the petitioner, through previous counsel, submitted the following evidence:

- A signed statement dated September 16, 2008 from the beneficiary stating that he worked as a baker for a company called [REDACTED] was bought by [REDACTED] and became [REDACTED] on October 22, 1998;
- A signed statement dated September 12, 2008 from [REDACTED] stating that she employed the beneficiary as a baker from March 12, 1997 to December 12, 1999 and that before [REDACTED] was registered in the CNPJ system, it was known as [REDACTED];
- A copy of the tax filing of [REDACTED] with the Brazilian authority on December 16, 1992; and
- A copy of the tax filing of [REDACTED] with the Brazilian authority on December 2, 1997.

Upon review of the evidence submitted, the director concluded that [REDACTED] and [REDACTED] were two distinct entities. The director stated that the two tax documents from

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<sup>5</sup> The director found the information above by searching the CNPJ database (the CNPJ database can be accessed online at <http://www.receita.fazenda.gov.br/>). CNPJ or Cadastro Nacional da Pessoa Juridica is a unique number given to every business registered with the Brazilian authority. In Brazil, a company can hire employees, open bank accounts, buy and sell goods only if it has a CNPJ. The director indicated that the Department of State had determined that the CNPJ provides reliable verification with respect to the adjudication of employment-based petitions in comparing an individual's stated hire and working dates with a Brazilian-based company to that Brazilian company's registered creation date.

[REDACTED] listed an address ([REDACTED]) that was different from the address listed on the letter of employment dated April 2001 from [REDACTED]. The director also stated that the signed statement dated September 16, 2008 from the beneficiary was self-serving and that the signed statement dated September 12, 2008 from [REDACTED] could not be independently verified. Accordingly, the director revoked the approval of the petition.

On appeal to the AAO, counsel states that the director's action to decline to accept the signed statements by the beneficiary and [REDACTED] violates the beneficiary's right to a fair adjudication. More specifically, counsel indicates that the regulation contains no requirement that the identity of the beneficiary's former employer be independently verified other than through the employer's own letter or declaration. Citing *Matter of Acosta*, 10 I&N Dec. 211, 218 (BIA 1985) counsel for the petitioner states that the beneficiary's own statement cannot be rejected solely because it is self-serving. Counsel states that adverse credibility determinations in administrative adjudications, particularly in the immigration context, where so much depends on an applicant's credibility, must be based on specific, cogent reasons that bear a legitimate nexus to the finding. See *Zabedi v. INS*, 222 F.3d 1157, 1165 (9th Cir. 2000); see also *Aguilera-Cota v. INS*, 914 F.2d 1375, 1382 (9th Cir. 1990).

To demonstrate that [REDACTED] the owner of [REDACTED] purchased the business from [REDACTED] and that [REDACTED] continued to operate [REDACTED] business under a fictitious name of [REDACTED] counsel submits the following evidence:

- A copy of an article entitled "Reining in Brazil's Informal Economy" by [REDACTED], et. al. published in [REDACTED] in 2005
- A copy of the business registration of [REDACTED] showing that the business was officially registered in the CNPJ system on 10/22/1998 (October 22, 1998);
- A document entitled "Write-off Registration Certificate in the CNPJ" indicating that [REDACTED] de-activated [REDACTED] on 2/12/2008 (February 12, 2008) by voluntary liquidation;
- A copy of the Application to de-activate [REDACTED] on 2/12/2008 (February 12, 2008);<sup>6</sup>
- A document entitled "Statement of Sole Proprietorship" showing that [REDACTED] filed the Application to form a bakery business on 9/28/1998 (September 28, 1998);<sup>7</sup>

<sup>6</sup> The Application notes the date of commencement of activities for the business on November 1, 1998.

<sup>7</sup> The Application was approved on October 22, 1998 by JUCESC (Board of Trade of the State of Santa Catarina, Brazil).

- A document entitled “Statement of Sole Proprietorship” showing that [REDACTED] filed the Application to form a confection business on 12/16/1992 (December 16, 1992);
- A declaration dated March 18, 2009 from the City of Imbituba, the State of Santa Catarina, stating that because of the re-registration performed in the County, the address of Imvipa was updated from [REDACTED], [REDACTED]<sup>8</sup>
- A declaration dated March 30, 2009 from [REDACTED] Director of power company in Imbituba, Brazil, who stated that Imvipa had been a customer of the power company since 3/15/1994 (March 15, 1994) and that Imvipa underwent an address alteration from [REDACTED], [REDACTED]<sup>9</sup>
- A joint sworn statement dated March 30, 2009 and signed by [REDACTED] and [REDACTED] stating that on February 1, 1997 [REDACTED] agreed to sell her business to [REDACTED], that due to the parties’ familial relationship (niece and aunt) they did not have a legal contract to execute the transaction, that from February 1, 1997 forward the business was managed by [REDACTED] and that on October 22, 1998 [REDACTED] started the business under a fictitious name of [REDACTED]
- A sworn statement dated April 7, 2009 from [REDACTED], who states that he is the son of [REDACTED] and has been the manager of [REDACTED] since February 1, 1997, and that he met the beneficiary when the beneficiary worked as a baker from March 12, 1997 to December 12, 1999;<sup>11</sup>
- A sworn statement dated March 30, 2009 from [REDACTED] who states that he was the accountant for both [REDACTED] and [REDACTED] and their business, that he knew of the transfer of ownership of the business in February 1997 from [REDACTED] to [REDACTED] that no official contract was signed between the parties, only a verbal contract, and that no other documentation is available to show that the transfer of ownership occurred since all documentation had to be kept for five years under the Brazilian government regulations;<sup>12</sup>

<sup>8</sup> The declaration was signed by [REDACTED] City Administrator. Copies of [REDACTED] credentials (e.g. Municipal government employee ID card and state identity card) are attached to the statement. He does not state the date of the reregistration of the address.

<sup>9</sup> [REDACTED] attaches a copy of his state identity card and copies of electric bills for [REDACTED] located at [REDACTED]. This statement is inconsistent with other evidence of record that [REDACTED] did not commence its business activities until November 1, 1998.

<sup>10</sup> [REDACTED] attaches a copy of her state identity card.

<sup>11</sup> [REDACTED] attaches copies of his government issued identity cards (state ID and CPF card or individual tax registration).

<sup>12</sup> Copies of [REDACTED] government issued identity cards (state ID and CPF card or individual tax registration) are included.

- A sworn statement dated March 26, 2009 from [REDACTED] who states that she has owned and operated a business adjacent to [REDACTED] since 1990 and that she knew that the beneficiary worked at [REDACTED] when he was a very young man;<sup>13</sup> and
- Various pictures of Invipa.

Upon *de novo* review, the AAO finds that the director had good and sufficient cause to reopen the approval of the petition by issuing the NOIR on September 3, 2008 to the petitioner. In the September 3, 2008 NOIR, the director stated that the beneficiary could not have worked at [REDACTED] from March 1997 to December 1999 because [REDACTED] was registered in the CNPJ system on October 22, 1997. The notice is specific to the current proceeding.

Based on the evidence in the record, including the documentation submitted on appeal, there remain questions about why the beneficiary indicated he worked for [REDACTED] in March 1997 when the company was not named [REDACTED] (and did not begin business operation) until November 1998. Further, there is no explanation as to why the letter from [REDACTED] indicated that it provided services to [REDACTED] in 1994, four years before the date of registration of the company as [REDACTED]. The petition's approval will not be reinstated, as questions about the beneficiary's work experience in Brazil remains unanswered, as more fully discussed below.

## **2. Beneficiary's qualification for the job offered**

As noted above, based on the evidence submitted, the AAO finds that the petitioner has not demonstrated that the beneficiary had the requisite work experience in the job offered before the priority date. Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate, among other things, that, on the priority date – which is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL – the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition.

To determine whether a beneficiary is eligible for a preference immigrant visa, USCIS must ascertain whether the beneficiary is, in fact, qualified for the certified job. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Madany v. Smith*, 696 F.2d, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

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<sup>13</sup> [REDACTED] attaches a copy of her government issued identity card, the state ID card.

Here, the Form ETA 750 was filed and accepted for processing by the DOL on April 30, 2001. Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two years of work experience in the job offered.

The beneficiary claimed on part B of the Form ETA 750 that he worked for various jobs from December 1999 to present (the beneficiary signed the Form ETA 750, part B, on April 28, 2001) and for [REDACTED] as a baker from December 1997 to December 1999. The multiple letters of employment submitted to demonstrate that the beneficiary was employed by [REDACTED] however, reflect that the beneficiary was employed by [REDACTED] from March 12, 1997 to December 12, 1999.<sup>14</sup>

The AAO also observes that the beneficiary was only 17 years of age in March 1997. In addition, the AAO notes that the beneficiary did not include his employment abroad on his Biographic Information (Form G-325), which he filed in connection with his Application to Register for Permanent Residence or Adjust Status (Form I-485).

The AAO further notes that the beneficiary, according to his Form G-325, lived in Imbituba, Santa Carina, Brazil until January 2000. No information was provided as to when he started to live in Imbituba, Santa Carina. [REDACTED], according to the evidence in the record, is located in Imbituba, Santa Carina, Brazil. It is important for purposes of determining the beneficiary's credibility to know when or how long the beneficiary lived in Imbituba, Santa Carina.

The petitioner additionally has not submitted independent objective evidence, such as copies of the beneficiary's paystubs, payroll records, tax documents, or financial statements or other evidence, i.e. Brazilian booklet of employment and social security, to show that the beneficiary had the experience in the job offered or in the related occupation before the priority date and that he qualifies for the job.

In summary, the director has good and sufficient cause to reopen the matter and to revoke the approval of the petition. The petitioner has failed to establish that the beneficiary possessed the requisite work experience in the job offered before the priority date.

Where the beneficiary of an approved visa petition is not eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for good and sufficient cause. Notwithstanding the USCIS burden to show good and sufficient cause in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is

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<sup>14</sup> The beneficiary later in a signed statement dated September 16, 2008 stated that he worked at Imvipa from March 12, 1997 to December 12, 1999, changing his claim on the Form ETA 750, part B, that he worked at [REDACTED] from December 1997 to December 1999. Additionally, none of the letters of employment indicated a change of name of the company in 1998 during the time of the beneficiary's employment.

not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.