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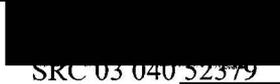
U.S. Citizenship
and Immigration
Services

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FILE:



SRC 03 040 52379

Office: TEXAS SERVICE CENTER

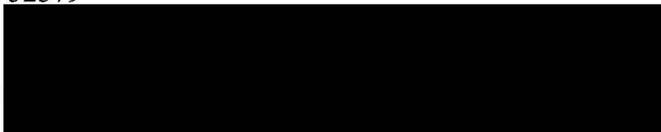
Date:

OCT 20 2006

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Michael Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was initially approved by the by the Director, Texas Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director subsequently revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision to revoke the approval will be withdrawn and the case will be returned to the director for further investigation and review.

The petitioner is a beauty salon. It sought to employ the beneficiary permanently in the United States as a hair salon manager. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on November 18, 2002. It was initially approved on June 17, 2003.

The beneficiary had previously been sponsored as a beneficiary of a Petition for Alien Relative (Form I-130) that had been filed by [REDACTED] a U.S. citizen, on July 22, 2000. Following an interview in connection with the beneficiary's Application to Register Permanent Residence or Adjust Status (Form I-485) and the conclusion of the Immigration and Naturalization Service, now U.S. Citizenship and Immigration Services (CIS), that the marriage between the beneficiary and [REDACTED] had been contracted in order to evade immigration laws [REDACTED] withdrew the I-130. The I-485 was denied on November 17, 2000 based on the withdrawal of the underlying petition.

On May 5, 2005, citing Section 204 (c) of the Immigration and Naturalization Act (ACT) [8 USC 1154(c)], which limits the approval of other petitions in certain circumstances involving sham marriages, the director concluded that the I-140 was approved in error based upon the prior proceedings. The director revoked the approval of the I-140.

Section 205 of the Act, states: "[t]he Attorney General 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 regulation at 8 C.F.R. § 204.5, however, provides in pertinent part:

- (b) *Notice of intent.* Revocation of the approval of a petition of [or] self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and his opposition to the grounds alleged for revocation of the approval.

As noted by counsel on appeal, the director did not issue a notice of intent to revoke the I-140 in this matter pursuant to the provisions of 8 C.F.R. § 204.5(b). As such, the director's attempted revocation of the I-140 on May 5, 2005, has no effect. The I-140 remains approved.

Based on the foregoing, further examination of the other issues raised by counsel on appeal is premature. The case will be returned to the director for further investigation and consideration.

Order: The director's decision of May 5, 2005 is withdrawn. The case will be returned to the director for further investigation and review.