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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



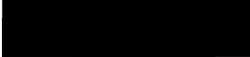
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 01 2009

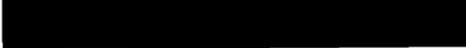
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IN RE:

Petitioner:

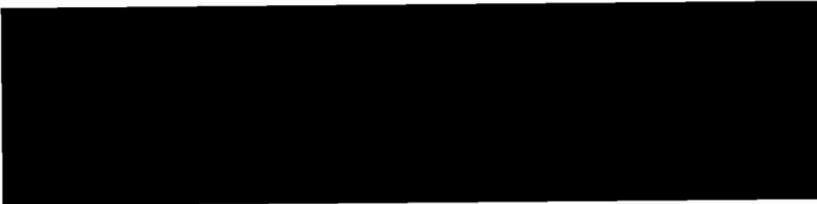


Beneficiary:



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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, cited a failure by the petitioner to respond to her December 28, 2006 Notice of Intent to Deny (NOID) and denied the immigrant visa petition on March 15, 2007. The petitioner filed an appeal of that decision to the Administrative Appeals Office (AAO). The matter will be remanded.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook of "sizzlin' food." As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the United States Department of Labor (DOL). As set forth in the director's March 15, 2007 decision, the director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position. The director denied the petition accordingly.

Counsel stated in his appeal that he submitted a complete response to the NOID in a timely manner with evidence contradicting the findings in the denial. Counsel provided evidence regarding his timely submission of the response.

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 AAO reviewed the record of proceeding under its *de novo* review authority. The authority to adjudicate appeals is delegated to the AAO by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. The AAO's *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)

Upon review of the record, the AAO has determined that counsel's response to the NOID was not joined with the file. The director therefore did not have this information when she issued her decision on March 15, 2007. Therefore, the AAO will remand the case to the director to consider the evidence that counsel timely submitted and to issue a new decision.

In view of the foregoing, the previous decision of the director will be withdrawn. 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 to the director for further action in accordance with the foregoing and for entry of a new decision.