

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

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U.S. Citizenship
and Immigration
Services

DATE: **JUL 03 2013** Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner: P.C.
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:

MITCHELL C. ZWAIK, ESQ.
MITCHELL C. ZWAIK & ASSOCIATES, P.C.
3900 VETERANS MEMORIAL HIGHWAY, #120
BOHEMIA, NY 11716

JUL 08 2013

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: On February 3, 2006, United States Citizenship and Immigration Services (USCIS) received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved on June 22, 2006. The Director for the Texas Service Center (the director), however, revoked the approval of the immigrant petition on April 26, 2010, and the petitioner subsequently appealed the director's decision to revoke to the Administrative Appeals Office (AAO). On January 4, 2013, the AAO rejected the appeal for untimely filing. Upon further review, the AAO reopened the case on its own motion and provided the petitioner an opportunity to supplement the record.¹ The appeal will be sustained, the director's decision to revoke the approval of the petition will be withdrawn, and the approval of the petition will be reinstated.

The petitioner is a health care provider and seeks to employ the beneficiary permanently in the United States as a medical and clinical laboratory technologist.² On February 3, 2006, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, on behalf of the beneficiary. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the Department of Labor (DOL), accompanied the petition. The petition was approved on June 22, 2006. However upon further review of the record, the director concluded that the petitioner failed to demonstrate that the beneficiary possessed the required license for Medical and Clinical Laboratory Technologist from the state of New York. The director also noted that the record did not contain a Visa Screen Certificate issued by either the International Health Commission on Health Care Professionals or another credentialing organization approved by USCIS.

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.³

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time,

¹ The AAO rejected the appeal on January 4, 2013 as untimely because the appeal was received 21 days after the revocation decision was sent. Counsel submitted evidence that he mailed the appeal on May 13, 2010 to be delivered the next day. There is no evidence that the appeal was delivered on May 14, 2010 as scheduled; however, the AAO has decided to reopen the case on its own motion for further review. Moreover, the AAO notes that contrary to counsel's assertion, the 18-day appeal clock starts on the day the revocation is mailed, not when the revocation is received by the petitioner.

² Section 203(b)(3)(A)(ii) of 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.

³ 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). 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).

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 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).

The director issued the first Notice of Intent to Revoke (NOIR) on January 19, 2009. The record reflects that the director remailed the NOIR on February 23, 2010.⁴ The director again mailed another copy of the NOIR to the petitioner on March 30, 2010 and sent a courtesy copy to the petitioner’s current counsel. The director provided 30 days (33 days if mailed) for the petitioner to respond to the NOIRs. The petitioner’s response to the third (the last) NOIR was due on May 4, 2010.⁵ However, the director issued his revocation decision on April 26, 2010, which was prior to the expiration of the time allotted for the petitioner to respond to the director’s third NOIR.⁶ Therefore, the AAO concludes that the director issued his revocation decision prematurely and that revocation decision is withdrawn.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on the labor certification. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Upon review of the record, the AAO is persuaded that the petitioner has demonstrated that the beneficiary possessed the minimum requirements as set forth on the labor certification as of the priority date.

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: The appeal is sustained. The director’s decision to revoke the approval of the petition is withdrawn. The approval of the petition is reinstated.

⁴ Copies of the NOIRs dated January 9, 2009 and February 23, 2010 were sent to the petitioner’s previous counsel.

⁵ The 33rd day fell on a Sunday; therefore the response was due the next business day, Monday, May 4, 2010.

⁶ The record reflects that the petitioner responded to each NOIR. The petitioner’s response to the director’s third NOIR, dated March 30, 2010, was mailed on April 30, 2010 to be delivered the next day. The AAO is not certain when the director received the petitioner’s last response. Nevertheless, the director issued his revocation notice prior to the expiration of the 33-day period.