

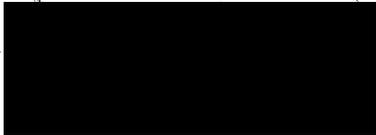


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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: [Redacted] Office: California Service Center

Date: 8 FEB 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the visa petition, and the reasons therefore, and revoked the approval of the petition. The petitioner filed an appeal of the director's decision. The Associate Commissioner rejected the petitioner's appeal as untimely and remanded the petition to the director for further consideration. The director reopened the matter and served the petitioner with a second notice of intent to revoke the approval of the visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on April 13, 2001. The director then certified the matter to the Associate Commissioner for Examinations for review. The director's decision will be affirmed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3).

The Administrative Appeals Office ("AAO") remanded the petition to the director on January 10, 2001. On March 16, 2001, the director issued a second notice of intent to revoke the approval of the petition. In a letter dated April 10, 2001, counsel for the petitioner responded to the director's notice stating:

[The petitioner] hereby opposes the revocation of the approval of his Form I-140. With regard to the basis for his opposition, [the petitioner] hereby reiterates the arguments raised in his opposition to the initial intention to revoke and in his appeal of the revocation, both of which are already in the record. Moreover, [the petitioner] respectfully draws the attention of the Service to the statement of California Service Center policy made by Center Director Dona Coultice at a liaison meeting with representatives of the American Immigration Lawyers Association held on February 13, 2001. At that meeting, in response to a question from [the petitioner's] counsel specifically addressing this case, Ms. Coultice stated, in the presence of Division Chief Mary Agnelly and over one hundred lawyers, that the California Service Center "does not revoke I-140's approved at this center unless we receive a recommendation from a district office or a consulate." Neither of those events has occurred in this case; the revocation was initiated *mero motu* by the Center.

In a letter dated January 17, 2000, counsel offered the following argument in opposition to the revocation of the petition's approval:

We fully understand and applaud the Service's legitimate concern in ensuring that only meritorious petitions are approved. We further agree that section 205 of the Immigration & Naturalization Act permits the revocation of petitions in certain circumstances. However, and with the greatest respect, we strenuously disagree that the section permits revocation in the present circumstances.

Section 205, by its own terms, permits revocation only for what the Attorney General "deems to be good and sufficient cause." Such "good and sufficient cause" is entirely absent from this case. The Service approved the initial petition, after requesting the submission of additional evidence and taking a lengthy period of time for deliberation. The Service's motive in issuing the notice of intention to revoke are extremely suspect, given that the notice accompanied the third rejection by the California Service Center of the self-petitioner's I-485 application for adjustment of status based on the I-140 approval.

The director revoked the approval of the petition, stating: "The self-petitioner has failed to submit documentation to establish that he is one of that small percentage who has risen to the very top of their field of endeavor." Both the notice of intent to revoke and the notice of certification revoking approval of the petition offer a detailed discussion of the evidence provided in support of the petition. A thorough review of the record supports the director's conclusions.

The Service regulation at 8 C.F.R. 205.2(a) provides:

Any Service 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 section 205.1 when the necessity from the revocation comes to the attention of the Service.

Counsel states that the approval was revoked without good and sufficient cause. Counsel argues that good and sufficient cause is absent because “[t]he Service approved the initial petition, after requesting the submission of additional evidence and taking a lengthy period of time for deliberation.” The time period involved in the adjudication of the petition is irrelevant. In this case, a review of the evidence submitted revealed that the petitioner did not meet the regulatory criteria as set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). Pursuant to the regulation and published precedent, if the director determines that an approval is in error, then the error represents good and sufficient cause for revocation.

In Matter of Ho, 19 I&N Dec. 582 (BIA 1988), the Board found that approval of a visa petition vests no rights in the beneficiary of the petition but is only a preliminary step in the visa or adjustment of status application process, and the beneficiary is not, by mere approval of the petition, entitled to an immigrant visa or to adjustment of status. The board further found that because “there is no right or entitlement to be lost, the burden of proof in visa petition revocation proceedings properly rests with the petitioner, just as it does in visa petition proceedings.”

The decision also notes that, pursuant to section 205 of the Act, the Service may revoke the approval of a petition “at any time for good cause shown.” The Board also found in Matter of Ho that a revocation need not be based on “a showing of new evidence, fraud, or error of law”; the Board affirmed that “mere error in judgment” in initially approving the petition can suffice as “good cause” for revocation of an immigrant visa petition. We find that Matter of Ho clearly supports the director’s decision to revoke the approval of the petition.

The petitioner has offered no specific evidence to oppose the revocation of the petition’s approval. The director has, however, specified that the evidence of record does not place the petitioner at the top of his field, which is a fundamental requirement for eligibility as an alien of extraordinary ability. Further, the petitioner has not expressed disagreement with director’s discussion of the evidence in the notice of intent to revoke dated March 16, 2001. In this proceeding, the petitioner has had ample opportunity to specifically address the reasons stated for the revocation and provide any additional evidence to establish eligibility.

Counsel offers no discussion of the merits of the petitioner’s claim, or any rebuttal of the director’s findings except to argue that the approval was revoked without good and sufficient cause. The focus of counsel’s argument is not that the petition was properly approved, but that, once approved, the director had no grounds to revoke that approval. This contention is contrary to the statute, regulations and published precedent.



**ORDER:** The director's decision of April 13, 2001 is affirmed. The approval of the petition remains revoked.