



U.S. Department of Justice

Immigration and Naturalization Service

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

BY



PUBLIC COPY

File: WAC 95 121 50855 Office: CALIFORNIA SERVICE CENTER

Date: JAN 25 2001

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:



identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was approved by the Director, California Service Center. Upon subsequent review, the director revoked the approval of the petition. The petitioner appealed that decision to the Associate Commissioner for Examinations, who remanded the case back to the director for further consideration. The director again revoked the approval of the petition, and the matter is once again before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a California corporation that claims to be engaged in the import and export of products. The petitioner seeks to employ the beneficiary as its president, and therefore, endeavors to classify him as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director revoked the petition on January 19, 1999, because the evidence did not show that beneficiary worked in a primarily executive or managerial position for the U.S. entity. Counsel for the petitioner filed a timely Form I-290B on February 1, 1999, and indicated that he would be filing a brief or other evidence within 30 days. More than 10 months have passed, without a brief or other evidence being submitted to the Service. As no additional information has been provided in support of the appeal, the record must be considered complete.

According to a statement by counsel on the Form I-290B, the Service erred in issuing a notice of intent to revoke and the subsequent final revocation for the following reasons:

1. The director lacked sufficient cause to issue the notice of intent to revoke on two prior occasions.
2. The Service's revocation of the petition was arbitrary and capricious.

The first issue to address is counsel's claim that the director lacked sufficient cause to issue the notice of intent to revoke on two prior occasions.

According to section 205 of the Act, the Attorney General may, at any time, for what he or she deems to be good and sufficient cause, revoke the approval of any petition approved by him or her under section 204. In Matter of Estime, 19 I&N Dec. 450 (BIA 1987), the Board held that a notice of intention to revoke 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. In Wilson v. Morris, Mo., 369 S.W. 2d 402, 407, the court held that the phrase

"good cause" depends upon circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed.

In the instant case, the director was not capricious in exercising her discretion to issue the notice of intent to revoke on either of the two occasions because she believed that good cause existed to re-examine the original approval upon further review of the entire record.

The first revocation of the petition resulted from an in-depth review of the record by both an Immigration Examiner during the beneficiary's adjustment of status interview, and by the director upon referral of the case to her from the Immigration Examiner. Both reviews revealed inconsistencies in the record that indicated the beneficiary was not eligible for visa classification as an executive or manager. By requesting certain documentation in her notice of intent to revoke the petition, the director specified the inconsistencies and the reason why the original decision to approve the petition may have been made in error.

The second revocation of the petition was a result of the Executive Associate Commissioner's review of the record, which revealed that the beneficiary's primary role within the petitioning organization was neither managerial nor executive. Again, the director provided the petitioner an opportunity to present evidence in rebuttal to a notice of intent to revoke the petition prior to revoking the petition for a second time. The record supports a finding that the director had sufficient cause on two occasions to issue a notice of intent to revoke the I-140 petition, and to ultimately revoke the petition.

The second and final issue to address is counsel's claim that the revocation of the petition was arbitrary and capricious. In order to find that the director's decision was arbitrary and capricious, the record must show that the director took willful and unreasonable action without consideration or in disregard of facts or without determining principle. Elwood Investors Co v. Behme, 79 Misc.2d 910, 361 N.Y.S.2d 488, 492.

In each revocation of the approval, the director clearly set forth the issues on which she was basing her decision; the inconsistencies in the record regarding the corporate relationship and the use of the beneficiary's title; and the insufficient job description for the beneficiary. Both of these reasons for revocation were reasonable, in light of all of the facts in the record. Therefore, this office does not find that the director's final decision to revoke the petition on either occasions was arbitrary and capricious.

It is incumbent upon the petitioner to resolve any inconsistencies

in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, supra at 591-92. On appeal, neither counsel nor the petitioner provide any substantive argument in rebuttal to the director's finding. Therefore, the Service affirms the decision of the director to revoke the previously-approved visa petition because evidence in the record does not support a finding that the beneficiary is functioning, or will continue to function in an executive or managerial capacity.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.