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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

[Redacted]

File: [Redacted]

Office: VERMONT SERVICE CENTER

Date: AUG 20 2002

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

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:

[Redacted]

Public Copy

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

Robert P. Weimann, Director
Administrative Appeals Office

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DISCUSSION: The immigrant visa petition was initially approved by the Director, Vermont Service Center. Upon subsequent review, the director properly issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The petitioner appealed the decision to the Associate Commissioner for Examinations and the Associate Commissioner dismissed the appeal. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be dismissed.

The petitioner is a corporation engaged in the import and export business. It seeks to employ the beneficiary as its president. Accordingly, it seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager. The director determined in the revocation decision that the petitioner had not established that the beneficiary had been or would be employed in an executive or managerial position. The Associate Commissioner affirmed the director's decision on appeal.

On motion for reconsideration, counsel for the petitioner asserts that the beneficiary meets the legal standards for a multinational executive or manager, the revocation of its initial approval was improper and the Service is estopped from revoking the petition, and the decision is inconsistent with the evidence presented.

8 C.F.R. 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel's assertion that the beneficiary meets the legal standards of a multinational executive or manager is conclusory and is not supported by pertinent precedent decisions. Likewise, counsel's assertion that the Service Center decision is inconsistent with the facts is not supported by pertinent precedent decisions. Counsel's assertions in this regard are without merit. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec.533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). Counsel has not provided the proper basis for a motion to reconsider on this ground.

Counsel also asserts that the Service's revocation of its approval was improper. Counsel acknowledges that the Service has the power to revoke approvals and that the Service can do so for good and sufficient cause. Counsel contends, however, that this revocation was improper because of the length of time that had passed (17

months) between the approval and the revocation. Counsel contends that the Service relied upon the same evidence to decide on one hand to approve the petition and then at a later date to revoke the petition. Counsel states that the Service did not explain what caused the contradictory decisions and contends that the decision to revoke was arbitrary and an abuse of discretion. Citing a federal district court decision, counsel asserts that the Service is estopped from making such a decision.

Counsel's assertions are not persuasive. In the case at hand, a notice of intent to revoke approval of a visa petition was properly issued for "good and sufficient cause," as the evidence of record at the time the notice was issued warranted a denial of the visa petition based upon the petitioner's failure to meet its burden of proof. The decision to revoke will be sustained where the evidence on record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intent to revoke, would warrant such denial. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of a petition's approval, provided the director's revised opinion is supported by the record. Id. In the present case, the decision to revoke was affirmed because the petitioner did not provide sufficient evidence to establish that the beneficiary had been or would be primarily employed in a managerial or executive position. The dismissal of the petitioner's appeal sets out the reasoning for the decision and neither the petitioner nor counsel has cited pertinent precedent decisions demonstrating that the reasoning was flawed. The record, viewed in its totality does not support a finding that the beneficiary's job duties were primarily executive or managerial in nature.

Further, the Administrative Appeals Office, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of the Service from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. See Matter of Hernandez-Puente, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to the Associate Commissioner for Examinations, through the regulations at 8 C.F.R. 103.1(f)(3)(iii). Accordingly, the Service has no authority to address the petitioner's equitable estoppel claim.

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 not sustained that burden. 8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed,



the proceedings will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed.