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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: 12 MAR 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosen
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center approved the immigrant visa petition. After subsequent review, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of his intent to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition on December 16, 2000. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded to the director for further action consistent with this decision.

The petitioner is a New York corporation that engages in the trade of silk fashion products. It seeks to employ the beneficiary as its president and, therefore, endeavors to classify the beneficiary 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 his approval of the petition because it appeared that the Service made an error in finding that the beneficiary was currently and would continue to be employed in a primarily executive or managerial capacity for the U.S. entity.

On appeal, counsel states that the petitioner was not given an opportunity to fully submit evidence in rebuttal to the director's decision because the director failed to state the reason why he was seeking to revoke his approval of the petition. Counsel further states that the director made an error of law by stating that the approval of the petition was being automatically revoked pursuant to 8 C.F.R. 205.1(a)(3)(iii)(C). As the record is presently constituted, counsel's statements have merit; the director erred in not providing the petitioner adequate notice of his reasons for revoking his approval of the petition and for citing an inapplicable section of Title 8, Code of Federal Regulations, in the Notice of Revocation.

First, on September 29, 2000, the director issued to the petitioner a Notice of Intent to Revoke. The director informed the petitioner that "the instant approval petition may not have been clearly correct," and requested that the petitioner submit additional evidence. The director did not, however, state the ground(s) upon which he was seeking to revoke his approval of the petition.

8 C.F.R. 205.2(b) states:

Notice of intent. Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in

support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

Although the director requested that the petitioner submit additional information, the director did not state the ground(s) upon which he was seeking to revoke his approval of the petition as required by 8 C.F.R. 205.2(b). Therefore, the petitioner was not provided adequate notice of the director's reasons for seeking to revoke his approval of the petition so that the petitioner could prepare a full and meaningful argument in rebuttal to the director's reason(s) for revocation.

Second and finally, in the Notice of Revocation, the director cited 8 C.F.R. 205.1(a)(3)(iii)(C) as the basis for revoking his approval of the petition. According to 8 C.F.R. 205.1(a)(3)(iii)(C), however, an automatic revocation of an approved petition occurs "[u]pon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitions." There is nothing in the record to show that the petitioner requested a withdrawal of the petition. Therefore, the director's citation of 8 C.F.R. 205.1(a)(3)(iii)(C) was in error and cannot form a valid basis for revoking the approval of the petition.

Accordingly, this case will be remanded to the director so that he may issue a new Notice of Intent to Revoke that clearly states the alleged ground(s) for revoking his approval of the petition. The director should allow the petitioner to present an argument or evidence in rebuttal, and may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of December 16, 2000 is withdrawn and the case remanded to him for entry of a new decision, which if adverse to the petitioner, is to be certified to the Associate Commissioner for review.