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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: CALIFORNIA SERVICE CENTER

Date: NOV 19 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]

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INSTRUCTIONS:

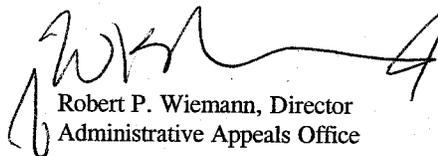
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was approved by the Director, Vermont Service Center. Upon subsequent review, the director properly issued a notice of intent to revoke the petition and her reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

The regulation at 8 C.F.R. 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The record indicates that the notice of revocation was mailed on May 8, 2000. The appeal was filed on May 30, 2000, 20 days after the decision was mailed. Thus, the appeal was not timely filed.

The regulation at 8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Review of the record indicates that the appeal meets this requirement. The petition will be remanded to the director for consideration as a motion to reopen.

Although the petition will be remanded to the director for consideration as a motion to reopen, examination of the record reveals a number of issues that must be addressed at this time.

Regarding the immigrant classification of an alien worker as a multinational executive or manager, Section 203(b)(1)(C) of the Act states:

Certain multinational executives and managers. An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

Review of the record discloses that the beneficiary of this petition was initially approved as a multinational executive, namely the vice-president of a trading and marketing enterprise.

Upon further review of new information received, the director issued a notice of intent to revoke the approval. The director

notified the petitioner that at an adjustment interview with an officer of the Service, the beneficiary was unable to provide basic information regarding the company. The director also indicated that an investigation of the petitioner revealed that it kept changing addresses and partnerships, and perhaps had merged with another company. The director concluded that the petitioner had not established that the beneficiary was performing duties that were managerial or executive in nature. The director further concluded that the petitioner had not established that it was conducting business in a regular, systematic, and continuous manner. The director ultimately revoked the approval of the petition after failing to receive a timely response to the notice of intent to revoke.

On appeal, counsel for the petitioner asserts that the petitioner responded timely to the notice of intent to revoke and provides the petitioner's rebuttal on appeal. Counsel asserts in rebuttal that the beneficiary's lack of knowledge on basic information regarding the company is due to the beneficiary's executive capacity in that she is not involved in the mundane matters of the company. Counsel also asserts that the petitioner's business had suffered in the past resulting in the need to merge with another company to improve profitability.

Counsel's assertions are not persuasive. 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). The petitioner's rebuttal does not appear sufficient to overcome the director's decision. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In the case at hand, the director did raise sufficient factual issues to support the revocation. The notice of intent to revoke and the subsequent revocation were based on evidence that was on the record at the time the notice was issued. The petitioner's contention that the beneficiary would be acting in an executive capacity for the petitioner has been severely undermined by the Service investigation. Likewise, the Service investigation revealed that the petitioner was not doing business as defined by 8 C.F.R. 214.2(l)(1)(ii)(H). Moreover, the petitioner provided no detail regarding its alleged merger with another company and thus it is not possible to determine if the petitioner continues to exist. Finally, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage of \$30,000 per year. See 8 C.F.R. 204.5(g)(2).

ORDER: The petition is remanded to the director for further action in accordance with the foregoing.