



U.S. Citizenship
and Immigration
Services

BY

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 23 2004

IN RE:

Petitioner:

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)

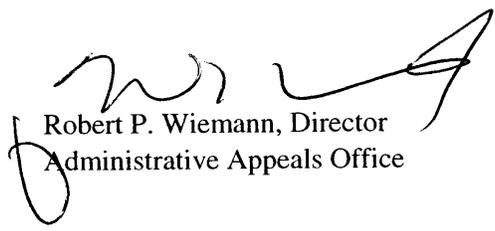
ON BEHALF OF PETITIONER:

[Redacted]

PATROL NO. 00000000

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

Administrative data deleted to
protect privacy of individuals
whose information appears in this document

DISCUSSION: The director initially approved the employment-based preference visa petition. Subsequently, however, the director determined that the petition may have been approved in error. The director, therefore, reopened the matter on a Citizenship and Immigration Services (CIS) motion and ultimately denied the petition on August 14, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a California corporation that seeks to employ the beneficiary as its president. The petitioner, 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 denied the petition because: (1) the proffered position in the United States is not in an executive or managerial capacity; (2) there is no evidence of a qualifying relationship between the petitioner and the claimed parent company in the People's Republic of China (China); and (3) the petitioner does not have the ability to pay the proffered wage.

On appeal, counsel submits a brief statement.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The regulations governing revocations of approved petitions state the following at 8 C.F.R. § 205.2, which applies to "revocations on notice":

- (a) *General.* 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 205.1 when the necessity for the revocation comes to the attention of this Service.
- (b) *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.
- (c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.
- (d) *Appeals.* The petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. The appeal must be filed as provided in part 3 of this chapter, unless the Associate Commissioner for Examinations exercises appellate jurisdiction over the revocation under part 103 of this chapter.

Appeals filed with the Associate Commissioner for Examinations must meet the requirements of part 103 of this chapter.

The director's decision on this matter must be withdrawn because he failed to following the applicable regulations after determining that the I-140 petition had been approved in error. Instead of issuing a Notice of Intent to Revoke (NOIR) as required by 8 C.F.R. § 205.2(b), the director reopened the proceedings on a motion to reopen pursuant to 8 C.F.R. § 103.5(a). The regulations at 8 C.F.R. § 205.2 make it very clear that CIS must follow specific procedures in order to revoke the approval of a petition. These procedures include the issuance of a NOIR that outlines the ground(s) upon which the director is seeking to revoke the petition's approval, and a notice of revocation if the director will ultimately revoke the petition's approval. Because the director did not issue a NOIR or a revocation notice, the matter will be remanded to the director so that he may follow the regulations at 8 C.F.R. § 205.2. 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 August 14, 2003 is withdrawn. The matter is remanded to him for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.