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**U.S. Citizenship
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Services**

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FILE: WAC 03 113 50895 Office: CALIFORNIA SERVICE CENTER Date: **AUG 08 2005**

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)

ON BEHALF OF PETITIONER:



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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the employment-based petition on December 12, 1997. On April 2, 2003, the director issued a Motion to Reopen, to which the petitioner failed to respond. On January 29, 2004, the director denied the petition due to abandonment. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition will be remanded to the California Service Center.

On April 2, 2003, the director issued to the petitioner a Service Motion to Reopen pursuant to the regulation at 8 C.F.R. § 103.5(a), providing the petitioner with twelve weeks from the date of the notice to submit requested evidence in rebuttal of the motion. The director attached Form I-797 asking that the petitioner provide specific documentation related to a qualifying relationship between the petitioning organization and the foreign entity, the beneficiary's employment in the United States in a primarily managerial or executive capacity, the petitioner's business operations in the United States and its ability to pay the beneficiary the proffered wage. As the petitioner did not submit a response to the director's motion to reopen, the director issued a Notice of Decision on January 29, 2004. In his decision, the director cited the regulation at 8 C.F.R. § 103.2(b)(13), and concluded that the petitioner had abandoned the petition. Consequently, the director denied the petition due to abandonment.

The petitioner's new counsel subsequently filed an appeal on March 1, 2004. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel claims that the director's motion to reopen is "invalid" as the director "failed to address the validity [sic] and the deficiencies in its Motion to Reopen in its Decision [sic]." Counsel also contends that the director failed to provide the petitioner with proper service of the decision. Counsel submits a brief in support of the appeal.

Following approval of an immigrant or nonimmigrant petition, the director may revoke approval of the petition in accordance with the statute and regulations. Specifically, section 205 of the Act, 8 U.S.C. § 1155 (2005), allows the Secretary of Homeland Security, at any time, for what he deems to be "good and sufficient cause," to revoke approval of a visa petition filed under section 204 of the Act.

The regulation at 8 C.F.R. § 205.2 also states that a Citizenship and Immigration Services (CIS) officer may revoke approval of an immigrant petition following notice to the petitioner of the intent to revoke and after providing the petitioner with an "opportunity to offer evidence in support of the petition . . . and in opposition to the grounds alleged for revocation of the approval."¹ Pursuant to *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987), the director's notice of intent to revoke must include a specific statement of the facts and supporting evidence underlying the proposed action. Similarly, the petitioner must be advised of derogatory evidence of which he is unaware, and must be provided with an opportunity to rebut the evidence and submit supporting documentation. *Id.* at 451. Further, where a notice of intent to revoke "is based on an unsupported statement or an unstated presumption, or where the petitioner is unaware and has not been advised of derogatory evidence, revocation of the visa petition cannot be sustained, even if the petitioner did not respond to the notice of intention to revoke." *Id.* at 452.

With regard to a director's decision to revoke, the regulation at 8 C.F.R. § 205.2(c) in relevant part, indicates:

¹ The regulation at 8 C.F.R. § 214.2(l)(9)(iii) outlines the requirements for revocation of a nonimmigrant petition.

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.

In the instant matter, rather than issuing a notice of intent to revoke, the director issued a CIS motion to reopen pursuant to the regulation at 8 C.F.R. § 103.5(a). Once the director decides to reverse the decision on an approved immigrant or nonimmigrant petition, the proper course of action is to "revoke" the approval and not reopen on service motion and deny. There are specific standards for revoking the approval of an immigrant or nonimmigrant visa petition. *See* § 205 of the Act ("good and sufficient cause"); 8 C.F.R. §§ 214.2(h) or (l) ("gross error" or other standards). If the director does not satisfy the legally-mandated requirements to revoke an approval by issuing a notice of intent to revoke for "good and sufficient cause," "gross error," or any other required standard, the approval is not properly revoked. The director may only issue a service motion to reopen and intent to deny for certain applications for immigration benefits, such as a Form I-539, Application for Change of Status or Extension of Stay; a Form I-90, application to replace a permanent resident card; or a Form I-765, application for work authorization. As noted above, the petitioner must be notified of the specific facts and evidence underlying the proposed revocation, and be afforded an opportunity to rebut the evidence. As the director did not issue a notice of intent to revoke, the instant matter will be remanded to the California Service Center for further proceedings.

ORDER: The director's decision dated January 29, 2004 is withdrawn and the petition is remanded to the director for further proceedings.