

U.S. Citizenship
and Immigration
Services



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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 08 2005**

WAC 96 131 53527

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION:

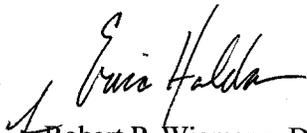
Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

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

DISCUSSION: The Director, California Service Center, approved the employment-based petition on May 14, 1996. The director subsequently issued a Notice of Intent to Revoke approval of the petition, properly providing the petitioner with thirty days within which to rebut the proposition to revoke. The director revoked the approval in a decision dated November 8, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the California Service Center in order for the Notice of Intent to Revoke to be reissued.

The petitioner filed the instant petition seeking to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California. It seeks to employ the beneficiary as its managing director.

The director approved the petition on May 14, 1996. On August 27, 2004, the director issued a Notice of Intent to Revoke approval of the petition to the petitioner at its last known address and to the petitioner's former counsel. The director properly gave notice to the petitioner of thirty days within which to respond with a rebuttal. As the petitioner did not respond, the director revoked approval of the petition in a decision dated November 8, 2004.

On November 18, 2004, the petitioner's current counsel filed an appeal, and subsequently submitted a brief on December 21, 2004. On appeal, counsel states that the Notice of Intent to Revoke was sent to the incorrect addresses for the petitioner and the petitioner's former counsel, as both have changed addresses since the approval. Counsel claims that the petitioner was not "effectively notified" of the director's Notice of Intent to Revoke and was not afforded the opportunity to respond.

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, allows the Secretary of Homeland Security, at any time, for what he deems to be "good and sufficient cause," to revoke the approval of a visa petition. The regulation at 8 C.F.R. § 205.2 provides 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.

Here, it is unclear from the record whether the petitioner was granted an opportunity to offer evidence in opposition to the director's intent to revoke approval of the petition. Accordingly, the instant matter will be remanded to the California Service Center to reissue the Notice of Intent to Revoke to the petitioner and counsel at their correct addresses. Following the director's decision, the matter shall be certified to the AAO.

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

CIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." As in the present petition, filed pursuant to Section 203(b)(1)(C) of the Act, if the director determines that the petitioner no longer has the ability to pay the beneficiary's proffered wage or that the beneficiary has not been employed in the United States or abroad in a qualifying capacity or has otherwise failed to maintain eligibility, the director may issue a notice of intent to revoke and request additional evidence. The director properly requested that the petitioner submit its federal and state tax returns and Form DE-6, State of California Quarterly Wage Report, Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for the years 1998 through 2004. The petitioner's financial documentation is essential to establishing its continuing ability to pay the beneficiary's proposed annual salary of \$24,000. Additionally, the director correctly requested documentary evidence related to the petitioner's business in the United States, the beneficiary's present and past employment as an executive or manager, and the qualifying relationship between the two entities, as each is an essential element in establishing qualification for the immigrant visa. *See id.*

The instant matter will be remanded to the California Service Center in order for the Notice of Intent to Revoke to be reissued to the petitioner and counsel. The matter shall be certified to the AAO following the director's decision.

ORDER: The decision of the director dated November 8, 2004 is withdrawn. The petition is remanded to the director for further proceedings.