

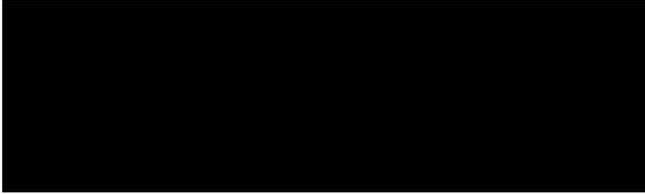
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



134

File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **DEC 14 2005**
WAC 95 255 52128

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)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based visa petition. Upon subsequent review the director issued a notice of intent to revoke approval of the petition and ultimately revoked approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a corporation organized in the State of California in April 1994. It claims to be engaged in wholesale trade. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The petition was filed September 27, 1995 and was approved October 5, 1995. Upon subsequent review of the record, the director issued a notice of intent to revoke approval March 9, 2005. The petitioner submitted a rebuttal April 7, 2005. The director denied the petition May 26, 2005, determining that: (1) public records showed that the petitioner became "inactive" or "suspended" in August 2002, and as such approval of the petition was automatically revoked; (2) the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity for the United States entity; and, (3) the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed June 7, 2005, counsel for the petitioner indicated that a brief and/or evidence would not be submitted.

Counsel's statement on the appeal form reads:

My above client [the beneficiary] was assigned by his parent company in China to operate a U.S. subsidiary during the middle 1990s. [The beneficiary] has run a successful business and the parent company applied the E-1-3 for him in 1995. The I-140 application for [the beneficiary] was approved by your Service ten years ago in 1995. He filed I-485 Adjustment of Status in the same year. In February 1997 my client has processed interview at INS Los Angeles district office. After then my cleint [sic] hasn't received any response until March 9, 2005, on which date your office sent a notice of [i]ntent to revoke the I-140 approval.

Until September 11, 2001, [the beneficiary] has operated successful business. But his I-485 application was pending without any response from your service. Six years after the I-140 approval the September 11 terrorism happened. Many business[es] were destroyed, also [the beneficiary's] business. Additionally he has more problem of business travel between China and U.S.A. Your Service ignores the fact that your service delayed the procedure and the September 11 event which damaged the U.S. economy. My client [the beneficiary's] business was also very negatively suffered effected.. [sic]

Based on those reason[s] we are filing the form to appeal the decision of your service.

Counsel's statement does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal. Counsel's statement suggests that he is requesting an equitable form of relief. However, the AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of Citizenship and Immigration Services (CIS) from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). This type of equitable relief is available only through the courts. The Secretary of the United States Department of Homeland Security limits the jurisdiction of the AAO to that authority specifically granted to the Secretary. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address counsel's request for equitable relief.

Moreover, the AAO specifically observes that the approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Further, a director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). The approval of the petition based on the limited information submitted in this matter was clearly a matter of gross error. The petitioner has not provided evidence, either in rebuttal or on appeal, to rectify the deficiencies in the original submission regarding the beneficiary's managerial or executive capacity for the petitioner or the petitioner's qualifying relationship with the beneficiary's purported foreign employer. Moreover, as the director determined, and counsel acknowledged, the petitioner no longer continues to conduct business.

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). When the application for adjustment of status was filed, this beneficiary was not eligible for the classification sought. The notice of intent to revoke approval was properly issued for "good and sufficient cause" because the evidence of record at the time the notice was issued, warranted a denial of the visa petition based upon the petitioner's failure to meet its burden of proof. *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Furthermore, notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

Inasmuch as counsel does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

The approval of the petition will be revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.