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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 11 2005  
WAC 98 119 51223

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

The petitioner is an organization established in the State of California in June 1995. It claims to import, export, wholesale, and retail electronic products and general merchandise. The petitioner seeks to employ the beneficiary as its general manager. 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.

On October 5, 2004, the director issued a notice of intent to revoke approval of the petition. The director determined that the petitioner had not established: (1) that the beneficiary had been employed abroad with a qualifying organization in one of the three years prior to entering the United States as a nonimmigrant in a managerial or executive capacity; (2) that the beneficiary would be employed in a managerial or executive capacity for the United States entity; (3) a qualifying relationship with the beneficiary's foreign employer; or, (4) its ability to pay the beneficiary the proffered wage. The director noted that good and sufficient cause existed to revoke the petition and afforded the petitioner 30 days to offer evidence in support of the petition and in opposition to the proposed revocation.

On October 24, 2004, counsel for the petitioner in rebuttal to the notice of intent to revoke observed that the director had not addressed "the fact that the beneficiary is currently an applicant for adjustment of status within the United States." Counsel, relying on *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), asserted that the Attorney General was not authorized to revoke a petition where the alien was already in the United States.

On November 4, 2004, the director issued his revocation decision, observing that the documentation submitted in rebuttal to Citizenship and Immigration Services (CIS) notice of intent to revoke did not overcome the grounds for revocation.

On appeal, counsel again cites *Firstland Int'l, Inc. v. Ashcroft*, a decision issued by the United States Court of Appeals for the Second Circuit on August 2, 2004. Counsel asserts that CIS does not have the authority to revoke approval of a previously approved immigrant visa petition when the alien is already inside the United States. Counsel does not dispute the director's determination that the beneficiary is not eligible for this visa classification on appeal.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

- (C) 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 who 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.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The AAO acknowledges the recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, and that in that opinion, the court interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel's reliance on this opinion and assertion that the district director does not have the authority to revoke approval of a petition once the beneficiary is in route or in the process of adjusting status is not persuasive.

In addition, according to the record of proceeding, the petitioner is located in the State of California; thus, this matter did not arise in the Second Circuit and *Firstland* was never a binding precedent. Even as a merely persuasive precedent, moreover, *Firstland* is no longer good law.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). *See* Pub. L. No. 108-458, \_\_ Stat. \_\_ (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary of Homeland Security 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under

section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

Generally, the 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). Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

CIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. *See* 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought or if the petition was approved in error, 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." 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).

In this matter, the director raised four separate issues in the notice of intent to revoke, based on the eligibility requirements set by the applicable statute and regulations. *See generally*, section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j). The director informed the petitioner that the record of proceeding: (1) did not contain substantive evidence that the beneficiary had been employed in a managerial or executive capacity for the foreign entity for one year prior to the beneficiary's entry into the United States as a nonimmigrant; (2) did not contain a comprehensive description of the beneficiary's duties for the United States entity; (3) did not demonstrate that a qualifying relationship exists with the overseas company, and (4) did not demonstrate the petitioner's ability to pay the proffered wage.

Based on the record of proceeding, the director's initial approval of this petition was contrary to the statute and plainly in error.<sup>1</sup> Here, the petitioner failed to offer substantive evidence in explanation or rebuttal to the four

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<sup>1</sup> The AAO notes that the director's decision contains confusing comments regarding the petitioner's ability to pay the beneficiary's proffered annual wage of \$24,000 when the petition was filed and continuing until the beneficiary's status could be adjusted. The AAO observes that the record contains the petitioner's Internal

issues raised in the director's properly issued notice of intention to revoke. Thus, the director's decision will be affirmed.

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 dismissed.

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Revenue Service (IRS) Forms 1120 for the 1998 and 1999 years and the 2000 IRS Form W-2, Wage and Tax Statement, issued by the petitioner to the beneficiary. These IRS Forms demonstrate that the petitioner had the ability to pay the proffered wage in 1998, 1999, and 2000. However, as the record does not contain evidence of the petitioner's continuing ability to pay the beneficiary the proffered wage and neither counsel nor the petitioner addressed this issue in rebuttal, the AAO cannot conclude that the petitioner has overcome the grounds of revocation on this issue.