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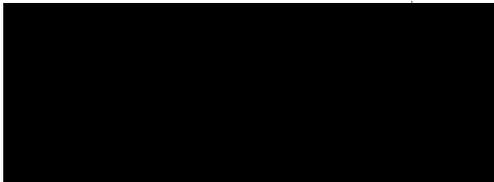
Petitioner:

Beneficiary:



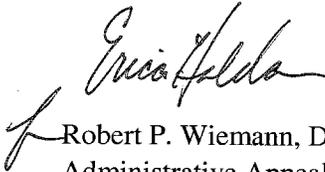
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the employment-based visa petition on December 9, 1996. Upon subsequent review, the director revoked the approval of the petition on January 23, 2003. The petitioner filed an appeal on February 6, 2003, which the Administrative Appeals Office (AAO) dismissed in a decision dated August 2, 2004. The matter is now before the AAO on a motion to reconsider. The AAO will grant the motion and affirm the previous decisions of the director and AAO.

The petitioner filed the employment-based 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 California that imports, exports, and distributes CD ROM, media software, and other computer products. The petitioner seeks to employ the beneficiary as its sales manager.

The director initially approved the petition. Upon subsequent review, the director revoked approval of the petition concluding that the petitioner had not demonstrated that: (1) it was doing business in the United States; (2) a qualifying relationship existed between the foreign and United States entities; (3) the beneficiary would be employed in a primarily managerial or executive capacity; or (4) it had the ability to pay the beneficiary the proffered annual salary of \$26,000. Counsel subsequently filed an appeal that was dismissed by the AAO.

On motion, counsel claims that the director improperly revoked approval of the petition without providing the petitioner with notice of the revocation before the beneficiary's departure to the United States. Counsel notes that under section 205 of the Act, 8 U.S.C. § 1155 and *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004) a revocation is not effective unless the director sends notice of the revocation to the petitioner's last known address and unless the notice of revocation is communicated to the beneficiary before his departure to the United States. Counsel asserts that because the beneficiary had been in the United States for approximately six years before the director's revocation of approval, such revocation is ineffective. Counsel submits a brief in support of the motion.

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 or 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 which 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.

The regulation at § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The sole issue in this proceeding is whether the director properly revoked approval of the immigrant visa petition where the beneficiary had already been living in the United States.

In a brief submitted in support of the motion to reconsider, counsel cites section 205 of the Act as evidence of the director's improper revocation of approval of the petition. At the time of filing the motion, August 30, 2004, Section 205 of the Act read:

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. Such revocation shall be effective as of the date of approval of any such petition. In no case, however, shall such revocation have effect unless there is mailed to the petitioner's last known address a notice of the revocation and unless notice of the revocation is communicated through the Secretary of State to the beneficiary of the petition before such beneficiary commences his journey to the United States. If notice of revocation is not so given, and the beneficiary applies for admission to the United States, his admissibility shall be determined in the manner provided for by sections 235 and 240.

Counsel also draws the AAO's attention to a recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004. In that opinion, the court in *Firstland* 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 asserts that the reasoning of this opinion should be applied to the present matter. Counsel claims that in accordance with *Firstland*, CIS may not revoke the approval because the beneficiary had already been in the United States when the director issued the revocation.¹

¹ Counsel's arguments illustrate the illogical effects of the Second Circuit's reasoning: In the present matter, the beneficiary entered the United States as a nonimmigrant L-1A intracompany transferee in April 1995,

According to the record of proceeding, the petitioner is located in Arcadia, California; thus, this case did not arise in the Second Circuit. *Firstland* was never a binding precedent for this case. 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.

Based on the foregoing discussion, the director properly revoked approval of the immigrant petition despite the beneficiary's residence in the United States at the time of revocation. Accordingly, the decisions of the AAO and the director will be affirmed. The immigrant visa petition is denied.

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. Accordingly, the decisions of the director and AAO will be affirmed and the petition will be denied.

ORDER: The decision of the AAO dated August 2, 2004 is affirmed.

more than one year prior to the approval of the immigrant petition and almost eight years prior to the revocation of the petition's approval. Accordingly, it was physically impossible for CIS to have notified the beneficiary of the revocation before he departed for the United States. In effect, counsel's interpretation of *Firstland* would have created a situation where any alien would have an irrevocable immigrant visa petition if the alien simply waited to file the petition after he or she arrived in the United States.