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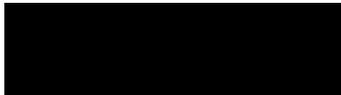
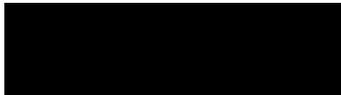
U.S. Citizenship
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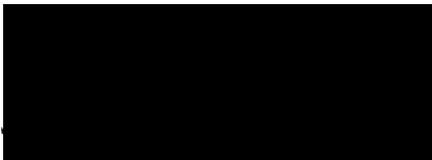


FILE:  Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2005

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the instant employment-based petition on September 14, 2000. Thereafter the director issued a Government Motion to Reopen/Reconsider/Intent to Deny and ultimately issued a notice denying the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the California Service Center.

On May 7, 2004, the director issued a Government Motion to Reopen/Reconsider/Intent to Deny, affording the petitioner 30 days to submit evidence and/or a written statement in rebuttal to the notice. On June 4, 2004, counsel for the petitioner submitted a company support letter and documentation in response to the director's motion to reopen. Upon review of the evidence submitted in response, the director denied the petition and informed the petitioner that it could appeal the decision within 30 days. On August 23, 2004, the California Service Center received a Form I-290B, Notice of Appeal, and forwarded the matter to the AAO.

Counsel indicates on the Form I-290B that a separate brief or evidence will not be submitted. Counsel states: "We believe that the evidence submitted in support of the I-140 petition and in our response to the California Service Center's notice of intent to deny the I-140 petition is sufficient to show [the beneficiary's] eligibility for Multinational Manager classification."

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 it 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) further indicates:

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). Generally speaking, a CIS motion to reopen is reserved for applications, such as I-539, Application to Extend/Change Nonimmigrant Status, I-90, Application to Replace Permanent Resident Card, or I-765, Application for Employment Authorization. The proper course of action in revoking approval of an immigrant or nonimmigrant petition is to issue a notice of

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

intent to revoke pursuant to the appropriate regulation. 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. Although the director informed the petitioner, through the notice of intent to deny, of the deficiencies of the record in support of the I-140 petition, the director did not properly characterize the matter as a revocation matter. In characterizing the matter as a denial of the petition rather than a revocation of the initial approval of the petition, the director also allowed the petitioner 30 days to appeal his decision rather than the 15 days required in revocation matters.

To underline the necessity of properly characterizing the director's decision and establishing the required time limits set out by regulation to respond to or to appeal decisions, this matter will be remanded to the California Service Center for further proceedings in accordance with this decision.

ORDER: The petition is remanded to the director to issue a notice of intent to revoke, and if the director's ultimate decision is to revoke approval of the petition, to certify the decision to the AAO for review.