

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

BY



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 09 2005

WAC 01 276 55378

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 January 2, 2002. On November 22, 2003, the director issued a Motion to Reopen and Request for Evidence. On March 26, 2004, the director denied 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 November 22, 2003, the director issued to the petitioner a Citizenship and Immigration Service (CIS) Motion to Reopen pursuant to the regulation at 8 C.F.R. § 103.5(a), providing the petitioner with eighty-four days, or twelve weeks, from the date of the notice to submit requested evidence. The director attached Form I-797 asking that the petitioner provide specific documentation related to the beneficiary's employment in the United States in a primarily managerial or executive capacity and the petitioner's business operations in the United States. On January 28, 2004, the petitioner provided a response to the director's motion to reopen. Upon review of the evidence submitted in response to the director's motion and request for evidence, the director denied the petition on March 26, 2004.

The petitioner, through counsel, subsequently filed an appeal on April 28, 2004. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel claims that: (1) CIS improperly determined that the petitioner is not doing business; (2) the director's conclusion that the beneficiary would not be employed in a managerial or executive capacity is based on the improper conclusion that the petitioner is not doing business in the United States; and, (3) CIS reopened this matter without proper cause and retroactively applied a higher standard of scrutiny to a petition that had already been approved. Counsel submits a brief in support of the appeal.

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 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.

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

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 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. As the director did not issue a notice of intent to revoke, the instant matter will be remanded to the California Service Center for further proceedings.

ORDER: The petition is remanded to the director for further proceedings.