

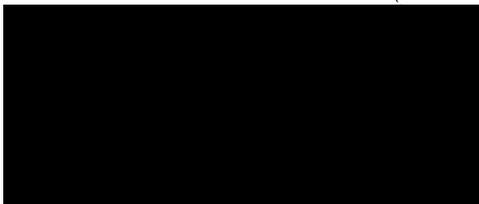


U.S. Citizenship  
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Services

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FILE: [Redacted]  
WAC 98 014 52081

Office: CALIFORNIA SERVICE CENTER

Date: FEB 21 2006

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 petition on November 5, 1997. On March 21, 2003, the director issued a Service Motion to Reopen with a request for further evidence. On July 23, 2003 and December 1, 2003, the director issued further requests for evidence. The director denied the petition on May 1, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the California Service Center.

On March 21, 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 a qualifying relationship between the petitioning organization and the foreign entity, 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. The petitioner provided a response on June 9, 2003.

On July 23, 2003, the director again requested further evidence on the issue of the petitioner's qualifying relationship with the beneficiary's foreign employer. The petitioner responded on October 10, 2003. On December 1, 2003, the director requested further evidence on the issue of the petitioner's qualifying relationship with the beneficiary's foreign employer, on the issue of the beneficiary's position in a managerial or executive capacity for the petitioner, and on the issue of the petitioner's doing business. In the December 1, 2003 request, the director emphasized certain requests by bolding and enlarging the typographical font used to make the request. The director also questioned the veracity of some of the petitioner's previously submitted information. The petitioner provided its response on February 19, 2004.

On May 1, 2004, the director denied the petition, determining that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer or that the beneficiary would be employed in a managerial or executive capacity for the U.S. petitioner. The director indicated that the petitioner could file an appeal that must reach the California Service Center within 30 days of the date of decision or within 33 days if the decision was mailed.

On May 27, 2004, 26 days after the decision, the petitioner submitted a Form I-290B, Notice of Appeal, indicating that a brief and/or evidence would be submitted within 30 days. The petitioner also submitted a motion to reopen and reconsider, on May 27, 2004. The director denied the motion to reopen and reconsider on June 22, 2004, determining that no new evidence or law had been submitted.

The record of proceeding does not contain a brief and/or evidence submitted in support of the appeal. The record of proceeding does not contain an appeal from the director's June 22, 2004 decision. The record of proceeding does indicate that it is "Part 1" of a two-part file. "Part 2" of the record has not been forwarded to the AAO.

Following approval of an immigrant 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 Attorney General, 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." 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 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. There are specific standards for revoking the approval of an immigrant petition; if the director does not satisfy the legally-mandated requirements to revoke an approval by issuing a notice of intent to revoke for "good and sufficient cause," or any other required standard, the approval is not properly revoked. 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 taking into consideration the proper methodology used when revoking approval of an immigrant petition.

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