

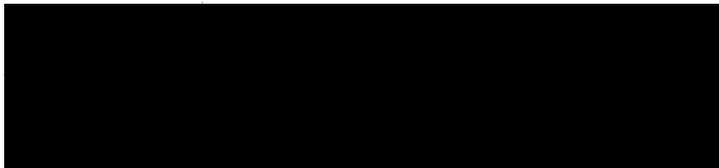
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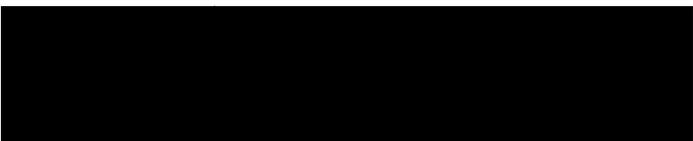


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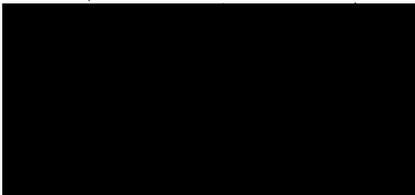
Date: FEB 21 2008

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

The petitioner is a corporation organized in the State of California in May 1998. It claims to provide energy research and consulting services. It seeks to employ the beneficiary as its president/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.

The petition was filed July 24, 2000 and was approved October 26, 2000. Upon subsequent review of the record, including information received in a February 25, 2002 interview in conjunction with the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, the director issued a notice of intent to revoke September 10, 2004. The director determined that the petitioner had not established that: (1) it had been or currently conducted business in the United States; (2) the beneficiary had been or would be employed in a managerial or executive capacity for the United States entity; (3) the beneficiary had been employed in a managerial or executive capacity for the foreign employer for the required time period prior to entering the United States as a nonimmigrant; (4) a qualifying relationship existed between the petitioner and the beneficiary's foreign employer; or, (5) it had the ability to pay the beneficiary the proffered annual wage of \$40,000. The director accorded the petitioner 30 days to respond to the issues raised in the notice of intent to revoke approval. In an October 6, 2004 letter, counsel for the petitioner requested an additional 30 days to gather information to respond to the notice of intent to revoke. On January 31, 2005, the director revoked approval of the petition, observing that the petitioner had been provided an extension to January 6, 2005 to rebut the director's determinations in his notice of intent to revoke, but had failed to provide any communication regarding the matter.

Counsel for the petitioner submitted a Form I-290B, Notice of Appeal, on February 15, 2005 indicating that a brief and/or evidence would be submitted within 30 days. Counsel did not indicate why the brief would be submitted late or otherwise provide good cause for the requested extension. In a letter dated March 14, 2005, counsel for the petitioner submits a "statement in support of appeal," noting that counsel "will address the relevant points raised in the Original Notice of Intent to Revoke dated September 10, 2004."

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).

Section 205 of the Act, 8 U.S.C. § 1155, states: "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."

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 450 (BIA 1987)).

In this matter, based on the record, the director had good and sufficient cause to issue a notice of intent to revoke and so properly issued the notice of intent to revoke. The petitioner's failure to offer evidence to rebut the inconsistencies and deficiencies in the record, when put on notice, requires that the director's decision to revoke the approval of a petition be affirmed, notwithstanding the submission of a brief and evidence on appeal. The AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Counsel has not provided evidence, good cause, or any sort of statement justifying the petitioner's failure to respond to the director's properly issued notice of intent to revoke approval. Inasmuch as neither counsel nor the petitioner responded to the director's notice of intent to revoke, the AAO will affirm the director's decision. See *Matter of Arias*, 19 I&N Dec. at 569.

The approval of the petition will be revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. 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.