

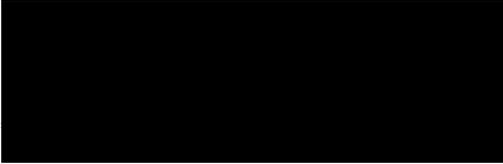


U.S. Citizenship  
and Immigration  
Services

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SRC 03 183 51144

Office: TEXAS SERVICE CENTER Date: FEB 21 2006

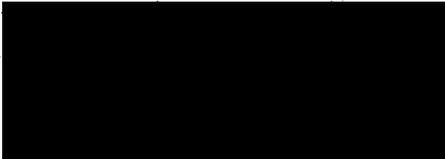
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

SELF-REPRESENTED

COURESTY COPY TO:



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, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon subsequent review, the director issued a notice of intent to revoke, and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The regulation at 8 C.F.R. § 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the Notice of Revocation. The Notice of Revocation is dated August 3, 2005. The Notice of Revocation also bears a date stamp August 16, 2005. It is unclear whether the Notice of Revocation was mailed August 3, 2005 or August 16, 2005 or whether the August 16, 2005 date stamp is unrelated to Notice of Revocation's mailing date. Giving the benefit of the inconsistency to the petitioner, the AAO will consider the appeal timely filed.

The AAO observes that the director issued a notice of intent to revoke approval of the petition on April 18, 2005 to the petitioner's last known address. The notice of intent to revoke was returned as undeliverable on May 2, 2005. The August 3, 2005 revocation decision is also mailed to the same last known address. The director determined in the Notice of Revocation that the petitioner had not responded to the notice of intent to revoke and had not proffered evidence establishing: that the petitioner and the foreign entity were qualifying entities; that the beneficiary had worked in a managerial or executive position for the foreign entity; that the beneficiary would work in a managerial or executive capacity for the U.S. petitioner; that both the U.S. petitioner and the foreign entity were conducting business, thus maintaining the multinational quality of the organizations; or that the petitioner had the ability to pay the beneficiary the proffered wage.

On the September 2, 2005, Form I-290B, Notice of Appeal, the petitioner states it will send a brief and/or evidence to the AAO within 30 days. The petitioner states on the Form I-290B that:

The before evidence was not submit[t]ed as the notice arrived too late. I'll be sending the evidence and explanation within 30 days.

The petitioner provides the following information on November 1, 2005:

- (1) An October 4, 2005 letter signed by an individual claiming to be the president of the petitioner located at [REDACTED] an address different from the petitioner's previous addresses, stating that a position as "manager" was still available to the beneficiary at \$9.00 an hour;
- (2) A Florida Form UCT-6, Employer's Quarterly Report for the third quarter of 2005 showing that the petitioner employed the beneficiary and one other individual;
- (3) An October 28, 2005 letter from the petitioner's accountants verifying that the beneficiary had earned a gross income of \$14,040 as of September 30, 2005;

- (4) Copies of minutes of the organization (the petitioner) dated January 10, 2005, March 10, 2005, July 6, 2005, and October 3, 2005, showing that the beneficiary was a "director" of the petitioner;
- (5) A May 2, 2005 certificate from the Florida Department of State certifying that the petitioner was active;
- (6) An undated letter signed by an individual claiming to be the president of the petitioner located at [REDACTED] indicating that the petitioner employed two individuals, the beneficiary in the position of general manager and a clerk. The letter also provided a brief description of the beneficiary's duties; and
- (7) A warranty deed dated October 13, 2005 showing the petitioner as grantee.

The AAO observes that 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 unrebutted, 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 information submitted on appeal.

Further, the regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

The petitioner in this matter does not address its failure to respond to the director's decision to revoke approval. The record does not include any evidence that the petitioner notified Citizenship and Immigration Services (CIS) of its changes in address. Moreover, the petitioner did somehow receive notice of the intent to revoke and the revocation decision when mailed to the petitioner's address on record. The AAO determines that the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the revocation of approval of the visa petition. Thus, the AAO will not consider the information submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Of note, the information submitted on appeal, even if considered, is not sufficient to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer, that the foreign entity continued to conduct business, thus maintaining the multinational character of the petitioner, that the beneficiary had been employed in a managerial or executive capacity by the foreign entity or would be employed in a managerial or executive capacity for the U.S. petitioner, or that the petitioner has the ability to pay the beneficiary the proffered annual wage of \$30,000.

The petitioner should note that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, that the approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. at 582. Finally, notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

In this matter the approval of the petition based on the limited information submitted was clearly a matter of gross error. The petitioner has not provided evidence to rectify the deficiencies in the original submission and has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal.

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 summarily dismissed.