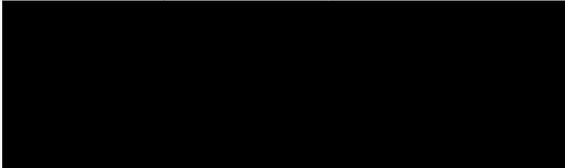


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**U.S. Citizenship
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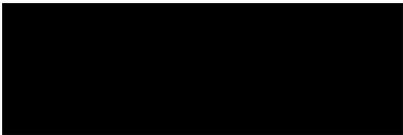
FILE: WAC 03 113 50895 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2006



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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was granted on December 12, 1997. After subsequent review of the record, the Director, California Service Center, issued a Motion to Reopen dated April 2, 2003. Based on the petitioner's failure to respond to the service motion, the director issued a denial on January 29, 2004 citing abandonment as the basis for denial. The matter came before the Administrative Appeals Office (AAO) on appeal. The AAO withdrew the director's decision and remanded the petition to the California Service Center. The matter is currently before the AAO on appeal from the director's latest decision revoking approval of the petitioner's Form I-140. The petition will be remanded again for further consideration.

Pursuant to the AAO's instructions in the decision dated August 8, 2005, the director issued a notice dated October 19, 2005 informing the petitioner of his intent to revoke approval of the petition. However, a review of the record shows that the notice of intent was not sent to the latest attorney of record despite the fact that the attorney filed a Form G-28 dated June 24, 2003 notifying Citizenship and Immigration Services (CIS) of his representation of the petitioner.

While the AAO notes that a copy of the notice of revocation was sent to counsel of record, the regulation at 8 C.F.R. § 205.2 states that CIS may only revoke a previously approved petition 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." In the instant matter, despite the director's attempt to inform the petitioner of his intent to revoke the previously approved petition, failure to send a copy of the notice of intent to the correct attorney of record denied the petitioner a meaningful opportunity to respond to the director's adverse findings. Accordingly, the instant matter must be remanded to the California Service Center for further proceedings. The director is instructed to consolidate the instant record of proceeding (WAC0311350895) with file number [REDACTED] which is located at the National Records Center.

Additionally, California State public records show that the petitioner is dissolved. The director is further instructed to reissue the Notice of Intent to Revoke to include a request for additional evidence of the exact date of the petitioner's dissolution.

With regard to counsel's citation of section 246(a) of the Act on appeal, the AAO notes that the statutory time limit discussed therein only applies to a rescission of an adjustment of status, not to a revocation of an approval of a Form I-140 immigrant petition. Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, states: "The Secretary of Homeland Security 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." (Emphasis added). Furthermore, counsel's citation of section 246(a) of the Act implies that the beneficiary is already a permanent resident of the United States. However, the record contains no evidence that the beneficiary was granted permanent residence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Finally, even if the beneficiary in the instant matter was granted lawful permanent residence through an approved Form I-485 adjustment of status application, despite possible ineligibility for the underlying Form I-140 immigrant petition, section 237(a)(1)(A) of the Act indicates that CIS may seek removal of the beneficiary, regardless of any statutory time limits on rescission. In addition, removal under section

237(a)(1)(A) of the Act applies whether the alien obtained permanent residence, despite ineligibility, by adjustment of status or through admission to the United States under an immigrant visa. Therefore, revocation of an underlying immigrant petition remains relevant and is not made moot by the granting of permanent residence to the beneficiary of that petition.

ORDER: The decision of the director dated December 14, 2005 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.