

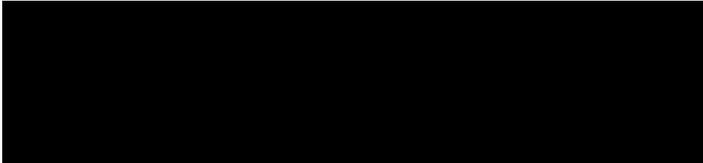


U.S. Citizenship
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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date: JUN 01 2006

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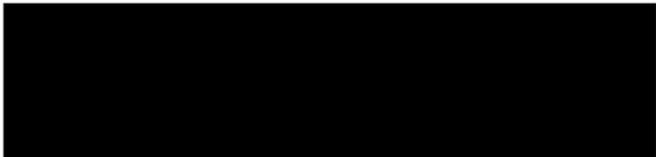
Petitioner:

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was approved by the Director, California Service Center. Upon further review, the director determined that the petitioner may have been ineligible for the benefit sought and issued a notice of intent to revoke (NOIR) the approval of the petition. The approval was subsequently revoked on December 8, 2005. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner was established in 1996 in the state of California. The petitioner claims to be engaged in domestic and international trading of computer technology and initially sought to employ the beneficiary as its vice president.¹ 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 director revoked approval of the petition based on two independent grounds of ineligibility: 1) the petitioner failed to establish that it has been doing business in the United States on a regular, systematic, and continuous basis; and 2) the petitioner failed to establish that the beneficiary has been and would be employed in a managerial or executive capacity.

Although counsel provided a brief on appeal, the entire statement, with the exception of the reference to the director's latest notice,² was a duplicate of counsel's response to the NOIR. With regard to counsel's reference to *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), the AAO wishes to expand on the director's response, as it does not clearly explain counsel's faulty reasoning. In that opinion, the court in *Firstland* interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of this opinion must be applied to the present matter and accordingly, Citizenship and Immigration Services (CIS) may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since she was already in the United States when the director issued the revocation.

According to the Form G-28 submitted on appeal, the petitioner and beneficiary are located in California; thus, this case did not arise in the Second Circuit. In fact, even if this case did arise in the Second Circuit, *Firstland* is no longer a binding precedent.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

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. Such revocation shall be effective as of the date of approval of any such petition.

¹ In a letter dated February 25, 2002, the petitioner's then president stated that he would be retiring from his position effective March 1, 2002 and that the beneficiary would assume the new position of president as of that date.

² Counsel referred to the director's latest notice as the "notice of Denial." That reference is incorrect, as the subject of the instant matter is a notice of revocation. While counsel's error is duly noted, it has no legal effect on the outcome of this proceeding.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

Again, section 205 of 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." 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)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590.

In the instant matter, the director raised valid concerns over the petitioner's diminished organizational structure since the date of the approval, implying that the petitioner cannot claim to employ the beneficiary in a primarily managerial or executive capacity if it lacks the necessary support personnel to relieve the beneficiary from having to primarily engage in nonqualifying operational tasks. Regardless of any economic hardships the petitioner may have experienced since approval of the Form I-140, the petitioner has the burden of maintaining eligibility to classify the beneficiary as a multinational manager or executive until the beneficiary obtains status as a lawful permanent resident. Counsel failed to address the issues cited in the director's revocation and which are germane to establishing the petitioner's eligibility.

Counsel's arguments rested almost entirely on equitable relief theories such as equitable estoppel, laches, and detrimental reliance. However, counsel fails to acknowledge the powers statutorily bestowed upon the director by virtue of section 205 of the Act, 8 U.S.C. § 1155. There is no question that the director established good and sufficient cause for his decision to revoke the approval of the petition in the instant matter. Counsel's prior arguments have not adequately addressed the grounds for ineligibility.

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.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.