



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 01 2007**  
WAC 97 118 53777

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:

[REDACTED]

**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 on May 3, 1997. Pursuant to information discovered during a subsequent review of the matter, the Director, California Service Center determined that the petitioner was no longer eligible for the immigration benefit sought and, therefore, issued a notice of intent to revoke (NOIR) the approval of the petition. The director ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California corporation engaged in the import, export, distribution, and sale of hardware tools. In a letter dated March 18, 1997, which was submitted in support of the petitioner's Form I-140, the petitioner stated that it was a subsidiary of Sisha Company Limited, located in China. The petitioner seeks to employ the beneficiary as its vice president. 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.

Pursuant to an investigation conducted after the petitioner's Form I-140 was approved, the director determined that the petitioner failed to maintain a qualifying relationship with the foreign entity and, therefore, became ineligible to classify the beneficiary as a multinational manager or executive.

The record shows that on July 3, 2001, an investigation was conducted via phone contact with representatives of the petitioning entity's claimed parent company. That investigation revealed that the parent/subsidiary relationship between the U.S. petitioner and the foreign entity had been severed in 1999 when the foreign entity relinquished its controlling interest over the U.S. petitioner. The record further shows that on July 10, 2001, the Los Angeles District Office returned the petition to the Citizenship and Immigration Services (CIS) for review for possible revocation. A letter dated July 10, 2001 was issued in an effort to notify the beneficiary of the further review and possible revocation.

On July 7, 2005, CIS issued an NOIR and sent it to the petitioner's latest attorney of record. However, CIS did not receive a response addressing the ground of ineligibility cited in the notice.

Accordingly, on December 28, 2005, the director issued a decision revoking approval of the petition. The director noted the petitioner's failure to respond to the NOIR and indicated that the petitioner failed to overcome the grounds cited therein.

On appeal, counsel claims that the petitioner was unable to respond to the NOIR because it did not receive the said notice.

However, the regulation at 8 C.F.R. § 292.5(a) states the following with regard to serving notices upon the attorney or representative of record:

Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

The record shows that the law firm that represented the petitioner at the time of the filing and approval of the petitioner's Form I-140 did not withdraw its representation before CIS. Accordingly, CIS properly sent the NOIR to the petitioner's attorney of record at the address previously provided. As such, CIS cannot be faulted for any delay in the petitioner's receipt of the properly issued notice.<sup>1</sup>

Counsel further disputes the underlying basis for ineligibility as cited in the NOIR, stating that the foreign entity did not sell its controlling interest of the foreign entity until September of 1999, two years after approval of the petitioner's Form I-140. However, a revocation will generally 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 intent to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988).

In the instant matter, the record clearly shows the lack of the petitioner's response to a properly issued NOIR. Therefore, revocation of the approval based on the petitioner's failure to respond was warranted.

Furthermore, even if the AAO were to overlook the petitioner's failure to respond to CIS's NOIR and consider counsel's statements with regard to the underlying ground for ineligibility, a revocation would nevertheless be warranted based on counsel's statements confirming the fact that the petitioner's qualifying relationship with the foreign entity was severed in 1999.

CIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." 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 the present matter, there is no documentation showing that an immigrant visa was issued as a result of the petitioner's approved Form I-140. Therefore, the petitioner's burden to maintain eligibility for the benefit sought continued well beyond 1997 and certainly did not terminate simply because the Form I-140 was approved. To the contrary, the foreign entity's sale of its controlling interests in the petitioning entity terminated the required qualifying relationship and, therefore, rendered the petitioner ineligible to classify the beneficiary as a multinational manager or executive.

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<sup>1</sup> Although no ineffective assistance of counsel claim was made in this case, there is insufficient evidence in the record to support such a claim even if it was made. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Additionally, counsel draws the AAO's attention to a recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004. 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, CIS may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since he was already in the United States when the director issued the revocation.<sup>2</sup>

According to the record of proceeding, the petitioner lives in California; thus, this case did not arise in the Second Circuit. *Firstland* was never a binding precedent for this case. Moreover, even as a merely persuasive precedent, *Firstland* is no longer good law.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, \_\_ Stat. \_\_ (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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

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.

Finally, counsel's argument that the petitioner's Form I-140 should not have been automatically revoked is irrelevant, as the petition in the instant matter was not, in fact, revoked automatically. As previously discussed, CIS properly issued an NOIR pursuant to 8 C.F.R. § 205.2 and only issued the final notice of revocation after concluding that the petitioner failed to respond to the adverse information cited therein. Any revocation that stems from a properly issued notice of intent cannot be deemed automatic.

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. The petitioner has not sustained that burden. Accordingly, the AAO affirms the director's decision to revoke the approval of the petitioner's Form I-140.

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<sup>2</sup> Counsel's arguments illustrate the illogical effects of the Second Circuit's reasoning: In the present matter, the beneficiary has resided in the United States as a nonimmigrant L-1A intracompany transferee since November 1995, two years prior to the filing of the Form I-140 immigrant petition and nearly ten years prior to the revocation of the petition's approval. Accordingly, it was physically impossible for CIS to have notified the beneficiary of the revocation before he departed for the United States. In effect, counsel's interpretation of *Firstland* would have created a situation where any alien would have an irrevocable immigrant visa petition if the alien simply waited to file the petition after he or she arrived in the United States.

[REDACTED]

**ORDER:** The appeal is dismissed.