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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: California Service Center

Date: APR 25 2001

IN RE: Petitioner: [Redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5), and § 610 of the Appropriations Act of 1993.

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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**DISCUSSION:** The approved immigrant visa petition was revoked by the Director, California Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, remanded the case to the director for a new decision. The director issued a new notice of intent to revoke and forwarded the case back to the AAO. The AAO remanded the case back to the director for a final decision. The director revoked the petition and certified the decision to the AAO. The case will be remanded for reconsideration.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(5), and § 610 of the Appropriations Act of 1993.

The petitioner filed Form I-526, Immigrant Petition by Alien Entrepreneur, indicating that the petition was based on an investment in a real estate business in a targeted employment area for which the required amount of capital invested has been adjusted downward to \$500,000.

On November 15, 1996, the director approved the visa petition. In May 1997, the petitioner was interviewed regarding his adjustment of status application. The interviewing officer was concerned that the petitioner would not be sufficiently engaged in the management of the business and referred the petition to the director for reconsideration. On June 4, 1998, the director issued a notice of intent to revoke, questioning whether the petitioner would be adequately engaged in the management of the business.

The petitioner responded and on January 28, 1999, the director revoked the approval. In her decision, the director concluded that the petitioner had not demonstrated he would be sufficiently engaged in the management of the business and also raised new issues. Specifically, the director concluded the petitioner had not established that the business was sufficiently capitalized, was an ongoing commercial enterprise or that the business would create the necessary employment. The director certified the decision to the AAO. The petitioner obtained a new attorney to respond to the director's decision. Counsel submitted a G-28 dated February 17, 1999, along with his brief.

On May 14, 1999, the AAO remanded the case to the director for a new notice of intent to revoke addressing all the issues raised in the final revocation. The AAO also indicated the director might wish to consider whether the petitioner had established that the business would be operating in a targeted employment area and the lawful source of his funds.

On June 18, 1999, the director issued a new notice of intent to revoke, concluding the petitioner had not established the following: that he would be sufficiently engaged in the management of the business, that the business was sufficiently capitalized to complete all the proposed projects, that the business would create permanent full-time employment for the required number of employees, that the petitioner's funds were lawfully obtained, or that the business would be operating in a targeted employment area.

The notice was mistakenly labeled "Notice of Certification" and forwarded to the AAO. In addition, the notice was addressed to the petitioner's prior attorney.<sup>1</sup> On December 6, 1999, the AAO remanded the case back to the director for a final decision.

On December 9, 1999, the director issued a final decision, noting the petitioner had failed to respond to the notice of intent to revoke but ultimately revoking the petition on its merits as discussed in the notice of intent to revoke.

The director advised the petitioner that the decision was certified for review and afforded the petitioner thirty days in which to submit additional documentation to the reviewing authority. As of this date, no further response has been received from the petitioner. As with the notice of intent to revoke, however, the notice was mailed to the petitioner's prior attorney.

While the director issued a new notice of intent to revoke and a final notice of revocation as requested, both notices were sent to prior counsel. The record contains a signed G-28 dated February 17, 1999, prior to both the notice of intent to revoke and the notice of revocation.

In light of the above, it does not appear that the petitioner or counsel were advised of the proposed grounds for revocation set forth in the June 18, 1999 notice of intent to revoke or the final revocation.

**ORDER:** The decision dated December 9, 1999, is withdrawn. The case is remanded for issuance of the notice of intent to revoke to counsel's correct address and consideration of any information the petitioner may wish to submit in response.

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<sup>1</sup> Further, there are three copies of the notice in the record, raising doubt that the notice was ever mailed.