



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



B6

FILE: EAC 02 067 51587

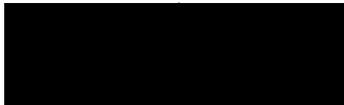
Office: VERMONT SERVICE CENTER

Date: DEC 19 2005

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based preference visa petition. In connection with the consular interview held with the beneficiary in Ankara, Turkey, and a subsequent memorandum sent to the director by the consular office, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140) based on the non-response of the petitioner. The petitioner then submitted an appeal of the director's revocation. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition will be remanded to the director for further consideration.

Section 205 of the Act, 8 U.S.C. 1155, states that "[t]he Attorney General [now Secretary, Department 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." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

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 order to properly revoke a petition on the basis of an investigative report, the report must have some material bearing on the grounds for eligibility for the visa classification. The investigative report must establish that the petitioner failed to meet the burden of proof on an essential element that would warrant the denial of the visa petition. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

On February 4, 2004, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner stating that it had come to the attention of his office that the beneficiary was not qualified for the position. The director also stated that a copy of the investigative report or memorandum that was the basis for the notice to intent to revoke was enclosed. The notice gave the petitioner 30 days to submit any evidence to overcome the reasons for revocation.

The memorandum attached to the letter stated that during the course of his interview under oath on August 14, 2003, the beneficiary was unaware of the company that filed the petition and did not know which job he

would be performing or what his salary would be. The memorandum continued that the beneficiary stated he had never spoken with a representative of Truely Yours, Inc, and that his wife had fifteen family members already in the United States, including one brother who worked for the company and arranged the job. The memorandum also noted that the beneficiary was not able to speak any English. Based on the investigative report, the director stated that the beneficiary was not eligible for the classification sought and that good and sufficient cause existed to deny the beneficiary the benefit sought.

The record also reflects two letters dated March 9, 2004 and July 14, 2004 sent to the Vermont Service Center by present counsel. The July 2004 letter states that the beneficiary had his interview in Ankara, Turkey where it was determined that the beneficiary did not speak English and the file was returned to the Vermont Service Center for possible revocation. Counsel submitted a letter from J. [REDACTED], Operations Manager, T.Y. Apparel, [REDACTED]. In this letter, Mr. [REDACTED] states that the petitioner intends to hire an Armenian or Turkish speaking worker in the production department to help with employee communication when the beneficiary arrives and begins work as a production manager. Counsel also requested that the petition be reapproved and that the petition be expedited due to one of the beneficiary's children aging out.

On July 30, 2004, the director issued a notice of revocation that stated the petitioner had not responded to the notice of intent to revoke the petition although a reasonable amount of time was afforded the petitioner.

On appeal, counsel states that the only reason the petition was denied was because the petitioner failed to respond to a request for evidence to overcome the ground of revocation pursuant to a notice of intent to revoke. Counsel states that the notice of intent to revoke was never received. Counsel also states that repeated requests for adjudication of the I-140 petition were submitted to the Vermont Service Center on March 9, 2004 and on July 14, 2004 along with evidence that the petitioner intended to hire an Armenian or Turkish speaking worker to help with communication when necessary. Counsel states that this is the only reason the petition was returned to the Service Center from the Consulate in Turkey. Counsel states that a similar request for adjudication was also faxed on May 20, 2004 and that counsel received a request to send in a new G-28. Counsel states that if the notice of intent to revoke was sent in February 2004, and if it was received, there would be no reason to keep asking for the expedited adjudication of the petition. Counsel submits copies of correspondence sent to the service center to expedite the adjudication of the instant petition.

Upon review of the record, it appears that notice of intent to revoke dated February 4, 2004 was sent to the attention of current counsel but to an address identified on the Form ETA 750 and the I-140 petition as that of the Greater Lowell Immigration Services Clinic (GLISC) in Lowell, Massachusetts. [REDACTED] identified as a consultant with GLISC on correspondence in the file, prepared the original petition in 2001. There is no G-28 Form in the record for Mr. [REDACTED]. However, there are two G-28 Forms for current counsel in the record. An earlier one is dated June 2, 2003, while a later document is dated May 24, 2004. The notice of revocation dated July 30, 2004 was sent to current counsel at his correct address in Boston, Massachusetts.

Since the record contains some documentation that current counsel had a G-28 in the file at the time the notice of intent to revoke the petition was mailed in 2004, it appears that the notice may have been sent to the GLISC consultant in error. There are two Forms G-28 on the record for Mr. [REDACTED] the earliest dated June 2, 2003. The record also reflects that the director requested an updated G-28 signed by the petitioner, which was dated and signed by the petitioner on May 24, 2004. Mr. [REDACTED] office address is listed on the G-28 as [REDACTED]. The director's notice of revocation was sent to the present counsel at his Boston address, with a copy sent to Truely Yours, Inc. in care of Mr. [REDACTED] in Lowell,

Massachusetts.¹ For this reason, it appears that the director's decision to revoke, based on the non-response of the petitioner, should be withdrawn, and the matter remanded to the director for further consideration.

The director's decision to revoke the petition, based on the non-response of the petitioner to the notice of intent to revoke the petition, and on the consular office's report, shall be withdrawn, and the matter will be remanded to the director for further consideration of the petitioner's identity, and by extension, the petitioner's ability to pay the proffered position. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

¹ Correspondence from the petitioner in the record indicates it is located at [REDACTED]
[REDACTED] This address is also reflected on the petitioner's 2000 federal income tax return.