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U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted]

Office: California Service Center

Date: AUG - 5 2002

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)

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The approved preference immigrant visa petition was revoked by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration .

The director approved the petition on September 20, 1997. On December 10, 1997, the petitioner filed a Form I-485 based on the approved petition. On April 1, 1999, the director issued a notice of intent to revoke. In that notice, the director referenced a request for additional documentation dated September 26, 1997 and the petitioner's alleged response. No such request appears in the record as part of the I-526 proceedings or the I-485 proceedings. The director also referred to several documents regarding the lawful source of the invested funds, none of which relate to this petitioner. The director also raised concerns regarding the use of promissory notes to make an investment. Once again, the record contains no evidence of a promissory note. Finally, without discussing the record's inclusion of wage and withholding reports reflecting that the business had 51 employees, the director concluded that the record contained no evidence that the required number of employees had been hired. The director sent a copy of the decision not to counsel, but to a different attorney. In response, the petitioner submitted a copy of the intent to revoke, highlighting the portions which did not apply to her. The petitioner also submitted Forms I-9 for the company's employees and new quarterly wage and withholding reports, thereby addressing the only portion of the notice of intent to revoke which might possibly pertain to her.

On October 16, 2001, the director revoked the petition. The director once again determined that the petitioner had not established the lawful source of her funds, asserting that she had failed to rebut the grounds set forth in the notice of intent to revoke. Yet, the discussion in the notice of intent to revoke regarding the source of funds did not relate to the petitioner. While the director concluded in the final revocation that the petitioner had not adequately documented how funds transferred by [REDACTED] in Hong Kong reflects a personal investment by the petitioner, that issue was not raised in the notice of intent to revoke although it does pertain to this petition. Finally, ignoring the wage and withholding reports, the director concluded that Forms I-9 alone cannot establish that the business has created the requisite number of full-time positions. Once again, this decision was sent to the petitioner, but not counsel. Rather, a copy was sent to same attorney as the notice of intent to revoke, despite his lack of involvement in this case.

On appeal, counsel asserts that the director violated due process since the petition was revoked without providing the petitioner an opportunity to rebut the proposed grounds of revocation. Counsel cites 8 C.F.R. 205.2(b) and Matter of Estime, 19 I&N Dec. 450 (BIA 1987). 8 C.F.R. 205.2(b) provides:

Notice of intent. Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

Matter of Estime provides that a decision to revoke the approval of a visa petition will not be sustained where the notice of intent to revoke was not properly issued.

Counsel further asserts that the petitioner borrowed the funds from Charter Ace and repaid those funds from the proceeds of the sale of property.

We concur with counsel that the director's reliance on a notice of intent to revoke which did not relate to the facts of the instant petition and was sent to the wrong attorney violated 8 C.F.R. 205.2(b) and Matter of Estime and constitutes reversible error.

Therefore, this matter will be remanded for consideration of the evidence submitted on appeal regarding the source of the petitioner's funds. For example, the director must determine whether the petitioner has sufficiently documented her alleged loan from Charter Ace, the repayment of that loan, the amount of the mortgage the petitioner had on the property prior to its sale referenced in the sales contract, and an employment history which could account for the funds used to purchase the property whose sale ultimately funded her investment.

In addition, the director may reevaluate the petition as a whole. For example, while the petitioner indicated on the Form I-526 that she owns only 10.53 percent of the company, the director does not appear to have inquired as to whether the other investors are also seeking benefits under this program or the source of their funds. Should the director still conclude that the petition was approved in error, the director shall issue a new notice of intent to revoke providing the basis for that conclusion with a copy to the correct attorney. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of October 16, 2001 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 Associate Commissioner for Examinations for review.