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U.S. Citizenship
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Services

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FEB 22 2005

[REDACTED]

FILE: [REDACTED]
WAC 01 216 55550

Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]

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

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

Robert P. Wiemann, Director
Administrative Appeals Office

CC: [REDACTED]

[REDACTED]

DISCUSSION: The Director, California Service Center, initially approved the preference visa petition. In connection with the petitioner's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner's initial attorney (prior counsel) 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). The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides 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).

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5). The director determined that the petitioner had failed to demonstrate a qualifying investment of the petitioner's own funds into a new commercial enterprise or that he would create the necessary employment. On appeal, prior counsel argues that the petitioner was deprived of counsel at his adjustment interview because prior counsel was not advised of the scheduled interview and the petitioner was not advised of his right to counsel.

The most recent Form G-28, Notice of Entry of Appearance, filed by prior counsel is dated April 24, 2001. Subsequently, on November 26, 2001, attorney Jean Pierre Gallelli submitted a Form G-28 signed by the petitioner. The regulation at 8 C.F.R. § 292.4(a) provides that substitution may be permitted "upon notification of the new attorney or representative." On November 29, 2001, the Director, Los Angeles District Office, advised the petitioner of his December 6, 2001 interview. The notice states "ATTORNEY NOTIFIED: Jean Pierre Gallelli." Thus, contrary to the allegations made on appeal, the District director properly advised the petitioner's then current representative of the scheduled interview.

On September 30, 2002, a third attorney, current counsel, entered her appearance with a properly executed Form G-28. This is the most recent Form G-28 in the record. The record does not contain a withdrawal from this attorney. Thus, current counsel is the proper attorney of record at the time the notice of intent to revoke was issued, February 23, 2004. The Service Center director, however, issued the notice of intent to revoke the approval of the petition to prior counsel. This was clearly in error, although prior counsel filed a response. The director also issued the final decision to prior counsel, who then filed the instant appeal.

Normally, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(2), where an appeal is filed by a representative without a proper Form G-28, we request the form from counsel. In this situation, however, the Service Center director did not properly serve the notice of intent to revoke on the attorney of record. *See* 8 C.F.R. § 292.5(a). As such, we must remand the matter to the director for proper service of the notice of intent to revoke on the petitioner's current counsel.

Therefore, this matter will be remanded for service of the notice of intent to revoke on the petitioner's current attorney, listed on the cover page of this decision. 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 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 Administrative Appeals Office for review.