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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE:

WAC 02 286 51490

Office: CALIFORNIA SERVICE CENTER

Date: APR 14 2005

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states: "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 204."

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)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

In a supplementary brief, 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.

According to the record of proceeding, the petitioner and the beneficiary are in Arizona; thus, this case did not arise in the Second Circuit. *Firstland* was never a binding precedent for this case. Even as a merely persuasive precedent, moreover, *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, 118 Stat. 3638 (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, in its entirety: "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. By the time counsel submitted his brief on January 28, 2005, *Firstland* had already been obsolete for over a month.

Following his arguments regarding the already-defunct *Firstland* decision, counsel states that the director "was capricious in overlooking the strong evidence that we provided in response to their Notice of Intent to Revoke." This is a general statement that makes no specific allegation of error. The bare assertion that the director somehow erred in rendering the decision is not sufficient basis for a substantive appeal.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.