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FILE: WAC 03 016 52308 Office: VERMONT SERVICE CENTER Date: JUL 11 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, revoked approval of the nonimmigrant visa petition in a decision dated June 10, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

The petitioner filed a Form I-129 petition, seeking O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him in the United States as a yoga instructor. On October 28, 2002, the petition was approved. The beneficiary appeared for a nonimmigrant visa interview at the Calcutta post on November 12, 2002. The Calcutta Officer in Charge (OIC) determined that the beneficiary was not eligible for the benefit sought and forwarded the approved petition and all relevant documents to the California Service Center for appropriate action.

The director's decision revoking approval of the petition shall be withdrawn and the matter will be remanded to him so that he can properly issue a notice of intent to revoke as required by the regulation at 8 C.F.R. § 214.2(o)(9)(iii), which states:

Revocation on notice --

(A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- (2) The statement of facts contained in the petition was not true and correct;
- (3) The petitioner violated the terms of conditions of the approved petition;
- (4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
- (5) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

Accordingly, this case shall be remanded back to the director so that he can issue a notice of intent to revoke and allow the petitioner 30 days to submit a rebuttal. After receipt and consideration of the rebuttal, the director should enter a new decision.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.