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

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[redacted]

JAN 28 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 00 050 52870

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, Director
Administrative Appeals Office

DISCUSSION: The approval of the preference visa petition was revoked by the Director, California Service Center. The Administrative Appeals Office (AAO) remanded the matter to the director on appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The director initially approved the petition. On further review, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the visa petition, and his reasons therefore, and ultimately revoked the approval of the petition. Specifically, the director determined that the petitioner had failed to demonstrate a qualifying investment of lawfully obtained funds.

The director's decision is dated May 31, 2002. The appeal was received 21 days later, on June 21, 2002. Citing the regulation at 8 C.F.R. § 205.2(d), the AAO concluded that the appeal was untimely and remanded the matter to the director for treatment as a motion to reopen. We note that the AAO also suggested that the director issue a new notice of intent to revoke incorporating new possible bases of ineligibility raised by the petitioner's response to the initial notice of intent to revoke.

On motion, counsel asserts that the AAO incorrectly calculated the number of days between service of the director's decision and receipt of the appeal. Counsel does not address the concerns the AAO suggested that the director incorporate into a new notice of intent to revoke. The petitioner submits an envelope with a June 3, 2002 postmark.

Our remand order, which included an order for the director to certify any new adverse decision to this office for review, is not a final adverse decision subject to a motion to reopen.[1] Moreover, we affirm our initial observation that the record contains evidence of ineligibility best addressed by the director in a new notice of intent to revoke to which the petitioner will have an opportunity to respond. Our belief that this issue is best addressed as an issue of first impression at the Service Center level is supported by counsel's failure to address that issue in the motion before us. Any new unfavorable decision by the director must be certified to this office for review without cost to the petitioner. Thus, we find that our failure to consider a motion to reopen a remand order does not impose any hardship on the petitioner.

ORDER: The motion is dismissed. The AAO's remand order of February 24, 2003 is reaffirmed.

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[1] We find that our failure to remove boilerplate motion language on the cover page of the remand order does not change the nature of the remand order, which is not subject to a motion to reopen or reconsider.