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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 99 178 50770 Office: VERMONT SERVICE CENTER Date: JUL 12 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

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 Director, Vermont Service Center, approved the petition for a nonimmigrant visa on September 30, 1999. Upon further review, the director determined that the beneficiary did not qualify for the classification sought. Accordingly, the director notified the petitioner on two separate occasions of his intent to revoke the approval of the petition, and provided the petitioner an opportunity to respond. The petitioner failed to respond to the director's two notices, and the director consequently ordered that the prior approval of the petition be revoked. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is engaged in the export of malt and hops for the beer industry. It seeks to employ the beneficiary as chief executive officer, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. Following the receipt of an investigative report performed by the U.S. Consulate General in St. Petersburg, Russia, in which the Consulate determined that the beneficiary's foreign employer is not a "bona fide L1 affiliate or subsidiary," the director concluded that the petitioner failed to demonstrate eligibility under the regulation at 8 C.F.R. § 214.2(l)(3).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, the petitioner states that on November 27, 2000 the petitioning organization responded by express mail to the director's October 2000 notice of intent to revoke. The petitioner attaches a letter that it claims is its November 2000 response. The petitioner also states that on March 8, 2001, following the receipt of the director's second notice of intent to revoke, the petitioner notified Citizenship and Immigration Services (CIS) of its earlier response through a written correspondence. The petitioner requests that this matter be given a "more thorough consideration using all supporting documentation and evidence we promptly collected."

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(9)(iii)(4), the director shall send to the petitioner a notice of intent to revoke the petition if he finds that the statement of facts contained in the petition was not true and correct. Generally, the decision to revoke approval of a petition will be sustained, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). In the present matter, the director notified the beneficiary on October 31, 2000 and January 23, 2001 of his intent to revoke and provided the petitioner with two opportunities for rebuttal. The petitioner neglected to respond to both notices by the director. CIS records confirm the beneficiary's failure to respond. Therefore, the director's decision to revoke the petition will be sustained.

Furthermore, although the petitioner submits a letter on appeal, which the petitioner claims is a copy of its November 2000 response to the director's notice of intent to revoke, the evidence will not be considered. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. As established above, the petitioner failed to submit the requested evidence.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.