U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 29 2005
WAC 00 257 52475

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN 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, California Service Center initially approved the employment-based immigrant visa petition. Subsequently, the beneficiary applied for adjustment of status. On the basis of new information received and upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. The director issued a notice of intent to revoke approval of the petition on November 1, 2002 and ultimately denied the petition. On a subsequent appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter to the service center for further action. The director properly issued a notice of intent to revoke on October 5, 2004, allowing the petitioner thirty days in which to submit a response. After the petitioner failed to submit a response, the director revoked the approval of the petition on February 1, 2005. The matter is now before the AAO on certification. The director's decision to revoke the approval of the petition will be affirmed.

The petitioner is a corporation organization in the State of California in May 1998. It initially stated that it imported and exported minerals, chemicals, and garments. It later claimed to buy and sell domestic products for use in garment manufacturing. Upon review of the record, the petitioner appears to now do business as a dry cleaning operation. It seeks to employ the beneficiary as its treasurer and chief financial officer. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

Based on further review of the record, the director issued a notice of intent to revoke the approval on November 1, 2002. The director determined that the petitioner failed to establish (1) that the beneficiary would be employed in a managerial or executive capacity, and (2) that the petitioner has a qualifying relationship with a foreign entity. The director ultimately denied the petition on August 11, 2003. The petitioner subsequently submitted an untimely appeal. On appeal, the AAO withdrew the director's decision due to procedural errors in the handling of the case and remanded the petition to the service center for further action. The director subsequently issued a new notice of intent to revoke the approval of the petition on October 5, 2004, advising that the petitioner had not submitted sufficient evidence to establish (1) that the beneficiary would be employed in a managerial or executive capacity in the United States; (2) that the petitioner has a qualifying relationship with a foreign entity; and (3) that the beneficiary was employed in a qualifying managerial or executive capacity with the foreign entity for one continuous year prior to her admission to the United States as a nonimmigrant.

On February 1, 2005, the director revoked the approval of the petition, noting that the petitioner had not submitted a response to the notice of intent to revoke. The director concurrently issued a Notice of Certification, advising the petitioner that it had 30 days in which to submit a brief or written statement to the AAO.

The evidence of record clearly shows that the notice of intent to revoke was properly sent to the petitioner's address of record and further indicates that the notice was also forwarded to the petitioner's counsel of record. *See* 8 C.F.R. § 103.5a. Therefore, the AAO concludes that the notice of intent to revoke the petition was properly issued and delivered to the appropriate parties.

Generally, the decision to revoke approval of an immigrant 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. *Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). For this reason, the decision of the director will be affirmed and the appeal will be 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

A notice of intent to revoke approval of 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. *Matter of Li*, 20 I&N Dec. 700, 701 (BIA 1993); *Matter of Arias, supra* at 569-70; *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988); *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). 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, supra* at 590.

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of a petition's approval, provided the director's revised opinion is supported by the record. *Id.*

Notwithstanding Citizenship and Immigration Services' (CIS) burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner still bears the burden of proof to establish eligibility for the benefit sought. *Id.* at 589; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *see also Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

In the present case, the director did raise sufficient factual issues to support the revocation. The notice of intent to revoke and the subsequent revocation were based on evidence that was in the record at the time the notice was issued. The petitioner did not offer a timely explanation or rebuttal to the notice of intention to revoke and has not overcome the factual inconsistencies contained in the record.

The petitioner failed to offer any explanation or rebuttal to the director's properly issued notice of intention to revoke. Accordingly, pursuant to *Matter of Arias, supra*, the director's decision to revoke the petition's approval will not be disturbed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the decision of the director will be affirmed and the petition approval will be revoked.

ORDER: The petition approval is revoked.