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**U.S. Citizenship  
and Immigration  
Services**

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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 17 2005

WAC 01 129 55679

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 employment-based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of further review of the record, the director determined that the petitioner was not eligible for the benefit sought. The director then reopened the case on service motion and ultimately denied the petition on July 22, 2004. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.<sup>1</sup>

The Form I-140 petition was approved by the California Service Center on October 11, 2001. On April 13, 2004, the California Service Center issued a notice informing the petitioner of its motion to reopen and intent to deny the approved I-140 petition. Once the director decides to reverse the decision on an approved immigrant or nonimmigrant petition, however, the proper course of action is to “revoke” the approval and not reopen on service motion and deny. There are specific standards for revoking immigrant petition approvals and nonimmigrant petition approvals. *See* § 205 of the Act (“good and sufficient cause”); 8 C.F.R. §§ 214.2(h) or (l) (“gross error” or other standards). If the director does not satisfy the legally-mandated requirements to revoke an approval by issuing a notice of intent to revoke for “good and sufficient cause,” “gross error,” or any other required standard, the approval is not properly revoked. The director may only issue a service motion to reopen and intent to deny for certain applications for immigration benefits, such as a Form I-539, Application for Change of Status or Extension of Stay; a Form I-90, application to replace a permanent resident card; or a Form I-765, application for work authorization.

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 un rebutted, 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

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<sup>1</sup> Although the petitioner has an October 31, 2001 Form G-28, Notice of Entry of Appearance as Attorney or Representative, on file indicating that she is represented by an attorney, the AAO notes that the petitioner’s attorney resigned from the California State Bar Association with charges pending on June 13, 2002. According to the California State Bar Association, the petitioner’s attorney “stipulated to misconduct in 38 consolidated immigration cases.” See California State Bar Association website, [http://members.calbar.ca.gov/search/member\\_detail.aspx?x=75851](http://members.calbar.ca.gov/search/member_detail.aspx?x=75851) (accessed November 16, 2005). 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented “by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter.” The individual listed on the Form G-28 signed by the petitioner does not meet any of these requirements. Subsequent to his resignation, this individual prepared the petitioner’s immigration appeal and submitted responses to service center notices in her behalf, and otherwise continued to provide legal services in immigration matters before Citizenship and Immigration Services.

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 Esteime*, 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. In *Matter of Ho*, the Board found that because "there is no right or entitlement to be lost, the burden of proof in visa petition revocation proceedings properly rests with the petitioner, just as it does in visa petition proceedings."

In the present case, based on the observations provided in the director's notices of April 13, 2004 and July 22, 2004, we find that good and sufficient cause exists to initiate revocation proceedings. While we agree with the director that the evidence of record is not adequate to demonstrate the petitioner's eligibility for the benefit sought, the director did not properly serve the petitioner with a notice of intent to revoke the approval of her immigrant visa petition. Therefore, this matter will be remanded. The director should issue a notice of intent to revoke and allow the petitioner the opportunity to respond to that notice within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.