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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
EAC 05 125 51351

Office: VERMONT SERVICE CENTER

Date: OCT 12 2006

IN RE: Petitioner: [REDACTED]
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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved in error by the Director, Vermont Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. On October 28, 2005, the director incorrectly issued a notice of "intent to deny" and subsequently revoked the approval of the petition on January 5, 2006. 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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The Form I-140 petition was approved in error by the Vermont Service Center on August 10, 2005. On October 28, 2005, the Vermont Service Center issued a notice informing the petitioner of its "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 issue a notice of intent to "revoke" rather than a notice of "intent to 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 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 Estime*, 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, our review of the record indicates that the director's initial approval of the petition on August 10, 2005 was erroneous. The evidence submitted by the petitioner fails to establish that she meets any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Therefore, we find that good and sufficient cause exists to initiate revocation proceedings. While we agree with the director's October 28, 2005 and January 5, 2006 notices indicating that the evidence of record fails 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, regardless of outcome, is to be certified to the AAO for review.