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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
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Services

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FILE:

SRC 03 252 51579

Office: TEXAS SERVICE CENTER

Date: OCT 19 2009

IN RE:

Petitioner:

Beneficiary:

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:

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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, initially approved the preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that 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 unrebutted, 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 Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* 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. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). Upon review after the consulate returned the Form I-140 petition, the director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the consular officer who returned the visa petition violated U.S. Department of State guidelines and that the petitioner has established his eligibility. Counsel has not established that State Department guidelines confer any rights upon the petitioner or that U.S. Citizenship and Immigration Services (USCIS) has any jurisdiction to enforce State Department guidelines. At issue in the matter before us is only whether or not the director had good and sufficient

cause to revoke the approval of the petition and complied with the procedural requirements for the revoking of approved petitions set forth in pertinent regulations and precedent decisions. For the reasons discussed below, we find that the director did not comply with those procedural requirements.

The regulation at 8 C.F.R. § 205.2, **addressing revocation on notice, provides:**

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision **that explains the specific reasons for the revocation.** The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

(Bold emphasis added.) In addition, a revocation can only be grounded upon, and the petitioner is only obliged to respond to, the allegations in the NOIR. *Matter of Arias*, 19 I&N Dec. 168, 170 (BIA 1988). Thus, it logically follows that the NOIR must also explain the specific reasons for the proposed revocation.

The NOIR advised:

The case was approved by this office on August 28, 2004 and forwarded to the National Visa Center. The National Visa Center has now returned the approved I-140 petition with information, indicating that the beneficiary is not qualified under EB1 as an alien of extraordinary ability in the arts.

The beneficiary is the administrator of an ethnic performing arts troupe in Guangxi, China. While many of the students and performing art troupes administered by the beneficiary have won honors, the beneficiary has provided little evidence that he is an alien of “extraordinary Ability” in the sciences, arts, education, business or athletics.

The petition also does not seem to address how the beneficiary would continue to work in his field (the education of Chinese minorities in ethnic art) upon arrival to the United

States. The petition has also failed to demonstrate how this endeavor would substantially benefit the United States.

The above statements are all conclusory rather than based on any analysis of the evidence under the regulatory requirements set forth at 8 C.F.R. §§ 204.5(h)(3), (5). The NOIR did not indicate what information, if any, was provided with the consular return. We are not persuaded that this notice afforded the petitioner a true opportunity to respond to the director's concerns. Despite the deficiencies in this notice, the petitioner submitted a response that attempted to address any concerns the director might have had, including the submission of a personal statement of the petitioner's intent upon entering the United States.

The NOR reiterates that the National Visa Center returned the petition "with information indicating that the beneficiary is not eligible for the benefit sought" but once again does not indicate what information the consulate provided. The NOR then cites section 205 of the Act pertaining to revocations and concludes that the Form I-140 petition "is hereby revoked as of the date of approval." At no point does the NOR discuss the petitioner's response to the NOIR or even acknowledge that a response was submitted. In contravention of the regulation at 8 C.F.R. § 205.2(c), the director did not explain the specific reasons for the revocation, precluding a meaningful appeal.

Therefore, this matter will be remanded. The director must issue a new NOIR, containing *specific findings* that will afford the petitioner the opportunity to present a meaningful response. For example, the director shall note the following in addition to any other concerns the director may have:

1. Several of the awards are merely recognition for participation in an event and the record contains no information regarding the significance of any of the petitioner's awards such as media coverage of the selection of the awardees or official material indicating the process for issuing such awards and the number of such awards issued annually. In order to be considered evidence of eligibility, the awards or prizes must be demonstrated to be lesser nationally or internationally *recognized* awards or prizes pursuant to 8 C.F.R. § 204.5(h)(3)(i).
2. The record contains no evidence of the official membership requirements for the associations of which the petitioner is a member as required under the plain language of 8 C.F.R. § 204.5(h)(3)(ii).
3. The attestations regarding the beneficiary's contributions pursuant to 8 C.F.R. § 204.5(h)(3)(v) appear to focus on his leading or critical roles for various entities, which is covered in a separate criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii). A presumption that evidence directly relating to one criterion must also meet a less relevant criterion would negate the statutory requirement for extensive evidence and the regulatory requirement that an alien

meet at least three separate criteria. Only a one-time achievement, a major internationally recognized award, can substitute for meeting at least three criteria. 8 C.F.R. § 204.5(h)(3). It should be noted that contributions must be both original and of major significance in order to meet the criterion set forth at 8 C.F.R. § 204.5(h)(3)(v).

4. The articles authored *by* the petitioner referenced in the record do not appear to relate to the petitioner's field and, thus, cannot serve to meet the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi).
5. The criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii) relates to display of the alien's work at an artistic exhibition or showcase and, thus, by its own language applies to visual artists. Performing is inherent to the performing arts and the record does not establish that the performances by the petitioner's troupe are exhibitions or showcases comparable to the exclusive artistic exhibitions or showcases that a visual artist might use to meet this criterion.
6. The record does not contain the specific evidence required to meet the regulation at 8 C.F.R. § 204.5(h)(3)(x), such as box office receipts. Balance sheets are not among the types of evidence required under this criterion and cannot demonstrate that the artistic association's cash is the result of commercial success or another source, such as grants.

After considering the petitioner's response to a new NOIR, if the director still concludes that there is good and sufficient cause to revoke the approval of the petition, the director must issue a new NOR that complies with 8 C.F.R. § 205.2(c) and *Matter of Arias*, 19 I&N Dec. at 170. 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; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.