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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE: [REDACTED]  
SRC 06 235 52513

Office: TEXAS SERVICE CENTER Date: APR 29 2010

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*Mari Plerson*

*S* Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with a Notice of Automatic Revocation revoking the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. While the AAO agrees that the petition is not approvable, the director's decision will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the "petition was filed using misrepresentation in order to obtain an immigrant visa."

On appeal, the petitioner argues that the documentation she submitted was "true and accurate" and that she qualifies for classification as an alien of extraordinary ability.

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 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 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.*

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The Form I-140, Immigrant Petition for Alien Worker, was filed on July 28, 2006 seeking to classify the petitioner as alien of extraordinary ability as an acrobatic gymnast. The director initially approved the petition on October 13, 2006. Upon learning that the petition was accompanied by fraudulent documents, the director issued a Notice of Automatic Revocation revoking the approval of the petition on July 31, 2008. The director's notice stated: "The Service has determined that this petition was filed using misrepresentation in order to obtain an immigrant visa." The director's decision provided no further explanation regarding the petitioner's material misrepresentation.

With regard to the requirements for automatic revocation of the approval of petitions filed pursuant to section 203(b) of the Act, the regulation at 8 C.F.R. § 205.1(a)(3)(iii) states:

*Petitions under section 203(b), other than special immigrant juvenile petitions.*

(A) Upon invalidation pursuant to 20 CFR Part 656 of the labor certification in support of the petition.

(B) Upon the death of the petitioner or beneficiary.

(C) Upon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitions.

(D) Upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.

None of the preceding conditions for automatic revocation of the approval of the instant petition is applicable in this matter. Accordingly, the director's automatic revocation of the approval the petition was in error. Once the director decides to reverse the decision on an approved employment-based immigrant petition for reasons other than those specified at 8 C.F.R. § 205.1(a)(3)(iii), the proper course of action is to issue a notice of intent to revoke the approval of the petition. The regulation at 8 C.F.R. § 205.2 states, in pertinent part:

Revocation on Notice.

(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. . . .

In this case, the petitioner has not been given the opportunity to offer evidence in opposition to the grounds for revocation cited in the erroneous July 31, 2008 Notice of Automatic Revocation. Moreover, the director's notice fails to adequately explain the specific reasons for the revocation of the approval of the petition. A revocation can only be grounded upon, and the petitioner is only obliged to respond to, the allegations in the notice of intent to revoke. 8 C.F.R. § 205.2(b); *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988).

Accordingly, while we agree with the director that the petition is not approvable, we must remand the matter to the director for the sole purpose of issuing a notice of intent to revoke the approval of the petition based on a finding of material misrepresentation. The director's notice of intent to revoke should advise the petitioner of the specific derogatory evidence as it relates to her "misrepresentation in order to obtain an immigrant visa." For example, the director's notice should specifically identify the fraudulent recommendation letters submitted in support of the petition. The grounds for revocation may not be based on inferences or conclusions that are not specifically addressed in the notice of intent to revoke.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452 n.1; and *Matter of Ho*, 19 I&N Dec. at 589.

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