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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

MAY 11 2005

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

EAC 99 033 50536

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)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition. Upon subsequent review, the director issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The director's decision to revoke approval of the petition was affirmed by the Administrative Appeals Office (AAO) on appeal and on a subsequent motion to reopen and reconsider. The matter is now before the AAO on a second motion to reconsider. The motion will be dismissed.

The petitioner is a company organized in May 1997 in the State of New Jersey. It imports, sells, and distributes textiles. The petitioner seeks to employ the beneficiary as its president. 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.

The petitioner filed the petition in November 1998 and it was approved in April 1999. Upon subsequent review of the record, the director issued a notice of intent to revoke approval in October 2000. The petitioner submitted a rebuttal but the director ultimately determined that the petitioner had not established the beneficiary would be performing primarily managerial or executive tasks. The AAO affirmed the director's decision and dismissed the petitioner's subsequent motion to reopen and reconsider the matter.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel submits this second motion on the basis of a new federal court decision, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004. In that opinion, the court in *Firstland* interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of this opinion must be applied to the present matter and accordingly, CIS may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since he was already in the United States when the director issued the revocation.[1]

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[1] In the present matter, the beneficiary apparently entered the United States as a nonimmigrant with an L-1A intracompany transferee classification valid from November 1997 to November 1998 that was extended to November 2000. While in the United States as an intracompany transferee, the petitioner submitted the Form I-140 requesting classification as an employment-based manager or executive. Accordingly, it was physically impossible for CIS to have notified the beneficiary of the revocation before he departed for the United States. In effect, counsel's interpretation of *Firstland* would have created a situation where any alien would have an

According to the record of proceeding, the petitioner is located in New Jersey; thus, this matter did arise in the Second Circuit. Although this matter did arise in the Second Circuit, *Firstland* is no longer a binding precedent, even within the Second Circuit.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). *See* Pub. L. No. 108-458, __ Stat. __ (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

> 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.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel's *Firstland* argument no longer has merit.

Counsel does not cite other pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.

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irrevocable immigrant visa petition if the alien simply waited to file the petition until after he or she arrived in the United States.