



U.S. Citizenship  
and Immigration  
Services

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FILE:

SRC 03 205 51282

Office: TEXAS SERVICE CENTER Date: SEP 06 2007

IN RE:

Petitioner:  
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:



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 Director, Texas Service Center, revoked approval of the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. However, the AAO will remand the matter to be treated as a motion.

The petitioner is a retail trade and food store seeking 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.

Noting that the record was deficient, the director issued a notice of intent to revoke (NOIR) dated February 14, 2006, notifying the petitioner of the adverse findings with regard to evidence provided to establish eligibility. Specifically, the director conveyed his doubt as to whether the petitioner submitted sufficient evidence to establish that the following criteria were met: 1) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; 2) the petitioner has a qualifying relationship with a foreign entity; 3) both the U.S. petitioner and the foreign entity with whom it claims to have a qualifying relationship are actively doing business; and 3) the beneficiary was employed abroad for the requisite time period in a qualifying managerial or executive capacity. The petitioner was allowed 30 days in which to address the director's findings.

The director determined that the petitioner failed to respond to the NOIR and revoked the approval of the petition on May 6, 2006. The revocation was entirely based on the finding that the petitioner failed to respond to the NOIR.

On appeal, counsel provides evidence in the form of a FedEx shipping label containing the tracking number, which shows that the petitioner provided a timely response to the NOIR and that the response was received at the designated Citizenship and Immigration Services (CIS) office in Dallas, Texas on March 15, 2006. Therefore, the petitioner has submitted new evidence addressing the sole ground for revocation.

However, with regard to time restrictions for appeals filed with the AAO, in order to properly file an appeal from a revocation, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the appeal within 15 days of service of the unfavorable decision. In the present matter, the decision revoking the approval of the petitioner's Form I-140 was issued on May 6, 2006. The petitioner's appeal was received on May 25, 2006. As the appeal was submitted beyond the 15 days provided by the above cited regulation, the AAO must reject the appeal as untimely filed.

Notwithstanding the untimely filing, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 Service 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. 8 C.F.R. § 103.5(a)(3).

Upon review of the facts and evidence in the present matter, the petitioner has submitted sufficient evidence to meet the requirements of a motion to reopen.

Additionally, the AAO finds that the director's basis for revocation was invalid. The regulations at 8 C.F.R. § 205.2(c), states the following, in part:

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 the present matter, the director's adverse decision was entirely based on his finding that the petitioner failed to respond to the NOIR. The specific reasons for finding the petitioner ineligible, which were cited in the NOIR, were not incorporated into the director's decision in which the approval of the petition was revoked. Moreover, the record shows that the director did not provide any instructions on how to appeal the revocation, thereby suggesting that the matter was treated as an abandoned petition and, thus, would not be subject to appeal according to the regulations at 8 C.F.R. § 103.2(b)(15). However, an adverse decision in the matter of a previously approved petition is not identical to a matter where a petition had not yet been approved and where eligibility is still being considered. With regard to the latter, a petitioner's failure to respond to a notice requesting additional information (RFE) may result in an adverse decision in which the director denies the petition based on the determination that it has been abandoned as suggested by the lack of a response to the RFE. See 8 C.F.R. § 103.2(b)(13). The same is not true of a matter where prior approval of a petition is being revoked.

The regulations at 8 C.F.R. § 205.2 contain specific provisions and steps that must be taken by CIS in order to issue a revocation on notice. The regulation at 8 C.F.R. § 205.2(b) requires CIS to issue a notice of its intent to revoke approval of the petition and allow the petitioner time to address the grounds alleged for revocation. As previously stated, 8 C.F.R. § 205.2(c) specifically requires that in matters where an adverse decision is warranted, the decision must state the specific reasons for revocation. In the present matter, the director failed to comply with 8 C.F.R. § 205.2(c).

Accordingly, the matter is hereby remanded and shall be treated as a motion requiring a full decision based on the merits of the case. The director is instructed to take into account the AAO's comments and observations in making a subsequent determination. That being said, the record suggests that the petitioner is not eligible for the immigration benefit sought. As such, the director shall review the record in its entirety and consider all of the evidence and information submitted thus far, including the petitioner's timely response to the NOIR, prior to issuing another decision.

**ORDER:** The appeal is rejected. The matter is remanded to the director for consideration as a motion to reopen.