



U.S. Citizenship  
and Immigration  
Services



B4

File: [REDACTED]  
SRC 04 202 53303

Office: TEXAS SERVICE CENTER

Date: DEC 01 2009

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)

IN 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

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**DISCUSSION:** The Director, Texas Service Center, revoked approval of the nonimmigrant visa petition. The matter is currently before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its general manager. 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.

On January 17, 2005, the director approved the petition. However, at a later date and upon further review, the director determined that petitioner may not be eligible for the immigration benefit sought. Accordingly, on November 7, 2007, the director issued a notice of his intent to revoke the approval. The director indicated that revocation may be warranted on the basis of information obtained during the beneficiary's interview at the U.S. Embassy in Caracas, Venezuela. The director stated, in part, the following:

The petition was returned to this Service from the U.S. Embassy, Caracas, Venezuela after interview with the beneficiary. Accordingly[,] post feels that the applicant failed to establish that *she* qualifies for an E13 visa. Accordingly, the consular officer refused to issue a visa and returned [sic] the petition to this Service for consideration of revoking.

(Emphasis added.)<sup>1</sup>

It is noted that the director cited no other basis for the intent to revoke other than the unstated adverse findings that were purportedly discovered during an interview in Caracas, Venezuela.

In response, counsel submitted a letter dated December 7, 2007 in which he explained that the beneficiary did not attend a visa interview in Caracas, Venezuela and instead contacted the U.S. Embassy in Venezuela via a letter dated August 27, 2007 in which the beneficiary indicated that he wished to pursue his adjustment of status in the United States and requested that his approved immigrant visa petition be forwarded to the U.S. Citizenship and Immigration Services for adjudication. The record is adequately supplemented with documents that corroborate counsel's explanation.

On September 29, 2008, the director issued a final notice of revocation, concluding that the petitioner was ineligible for approval of the immigrant visa petition on the following three independent grounds: 1) the petitioner failed to provide evidence of the foreign entity's ownership, thereby failing to establish that a qualifying relationship exists between the petitioner and the beneficiary's foreign employer; 2) the petitioner failed to establish that the beneficiary's proposed U.S. employment would be within a qualifying managerial or executive capacity; and 3) the petitioner failed to establish that it has the ability to pay the beneficiary's proffered wage of approximately \$45,600 per year.

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<sup>1</sup> Although not the basis for the decision to remand the matter back to the director for further consideration, the AAO notes the director's use of the incorrect female pronoun in referring to the beneficiary, who is a male.

On appeal, counsel disputes the propriety of the director's decision to revoke approval of the petition on the basis of grounds that were not previously cited in the notice of intent. In reviewing the record in its entirety, the AAO finds that counsel's argument is persuasive. The regulation at 8 C.F.R. § 205.2(b) states, in relevant part, the following:

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.

In the present matter, the three grounds that served as the ultimate basis for the adverse decision were first introduced in the notice of revocation. As the director based the notice of intent on a completely different ground, which the petitioner successfully overcame, and ultimately revoked the approval of the petition on the basis of three additional grounds, which the petitioner did not previously have the opportunity to address, the AAO must withdraw the director's decision.

Notwithstanding the AAO's determination, the record as presently constituted supports the director's overall finding with regard to the petitioner's ineligibility. In other words, while the director erred when he issued a revocation on the basis of grounds he did not previously cite in the notice of intent, the fact remains that the record as presently constituted does not warrant approval of the petition on the three grounds cited by the director's decision, as well as additional grounds that the director did not cite. Namely, in addition to the three grounds cited in the director's decision, the AAO notes that: 1) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity within the statutorily prescribed time period as required by 8 C.F.R. § 204.5(j)(3)(i)(B); and 2) the petitioner failed to establish that it had been doing business for one year prior to filing the petition as prescribed in 8 C.F.R. § 204.5(j)(3)(i)(D).

Accordingly, the director shall issue a new notice of intent to revoke informing the petitioner of all five of the above grounds and allowing the petitioner time in which to respond to the cited deficiencies. The director may also request any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought. If the petitioner fails to respond to the notice of intent or to overcome the grounds cited therein, the director must then issue a new notice of final revocation.

Regardless of whether the final decision is favorable to the petitioner or not, the director shall certify the decision to the AAO for review. At that time, pursuant to the regulations at 8 C.F.R. § 103.4, the petitioner will have 33-days to supplement the record with a brief.

**ORDER:** The decision of the director dated September 29, 2008 is hereby withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which shall be certified to the AAO for review.