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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



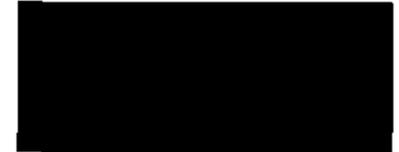
**U.S. Citizenship
and Immigration
Services**

B4



DATE: **AUG 16 2012**

OFFICE: TEXAS SERVICE CENTER



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director, Texas Service Center, initially approved the employment-based visa petition on December 8, 2006. The director subsequently determined that the petitioner was not eligible for the benefit sought and therefore issued a Notice of Intent to Revoke (NOIR). The director ultimately revoked approval of the petition on April 15, 2008. The petitioner subsequently filed an appeal to the Administrative Appeals Office (AAO) where the appeal was dismissed in a decision dated April 2, 2009. The petitioner subsequently filed a motion to reopen and reconsider which the AAO dismissed on November 23, 2010. On December 27, 2010, the petitioner filed a motion to reconsider. The motion to reconsider will be dismissed.

The petitioner is a limited liability company formed under the laws of the State of Florida. It seeks to employ the beneficiary as its general manager. Accordingly, it 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.

Upon review and after providing proper notice, the director ultimately revoked the approval pursuant to section 205 of the Act, 8 U.S.C. § 1155. The director determined that: 1) the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States, and 2) the petitioner failed to establish that it had been doing business for at least one year prior to the filing of the petition on November 14, 2005.

On motion, counsel does not address either of the two grounds that formed the basis for the decision to revoke the petition. Rather, counsel argues that it is improper for U.S. Citizenship and Immigration Services (USCIS) to revisit the issue of the petitioner's eligibility for the employment-based visa sought on behalf of the beneficiary when the beneficiary has already been granted permanent resident status. Counsel further asserts that if the beneficiary was not eligible for permanent resident status, the proper means to remedy the error is to commence the process for rescinding the approval of the beneficiary's application for adjustment of status in accordance with section 246 of the Act, thereby requiring USCIS to meet the clear, convincing, and unequivocal burden of proof. In addition, counsel contends that the cases discussed in the AAO's prior decision are not relevant as those cases discussed the revocation of an I-140 petition prior to the approval of adjustment of status, when in this case, the I-140 revocation has occurred after the beneficiary was granted adjustment of status.

Counsel sites to section 246 of the Act, and states that the AAO has no authority to rescind the adjustment of status. The AAO agrees with counsel and notes that the current revocation does not deal with the adjustment of status but instead is a revocation of the underlying I-140 petition.

USCIS regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. *See* 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition was ineligible or is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." By itself, a director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Notwithstanding the USCIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. In *Matter of Cheung*, 12 I&N Dec.

715 (BIA 1968), the Board specified that the burden remains with the petitioner in revocation proceedings to establish that the beneficiary qualifies for the benefit sought under the immigration laws, a principle which was reaffirmed in Matter of Estime, 19 I&N Dec. 450 (BIA 1987).

As stated in the AAO's earlier decision, with regard to 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 450 (BIA 1987)).

Counsel suggests that a petitioner's eligibility is no longer an issue once the beneficiary of the employment-based visa petition adjusts his or her status to that of a permanent resident. Counsel's interpretation presumes that eligibility for the employment-based visa had been properly established. Such is not the case with the current petitioner where both the director and the AAO (in its prior decision) outlined specific reasons showing why the petition had been erroneously approved. In the present matter, the record indicates that the beneficiary's permanent resident status was based solely on an approved Form I-140. Therefore, establishing eligibility for the underlying employment-based visa petition is a crucial step in the overall process of adjusting the beneficiary's status to that of a permanent resident. As such, while the petitioner does not have the burden of *maintaining* eligibility after the immigrant visa is issued, the petitioner cannot claim to have a valid visa petition if it failed to establish that it met the eligibility requirements at the time of filing and continued to meet such requirements through the date the beneficiary's status was adjusted to that of a permanent resident. Contrary to counsel's assertion, the issue of eligibility for the employment-based immigrant petition does not become irrelevant merely because an adjustment of status application was erroneously approved on the basis of a petition where eligibility had not been established. Such a visa petition would be deemed invalid and USCIS would be justified in reevaluating any subsequent benefits derived from the invalid visa petition. This is further reiterated in the Act at section 221(i) that states: "After the issuance of a visa or other documentation to any alien, the consular officer of the Secretary of State may at any time, in his discretion, revoke such visa or other documentation."

Counsel's argument overlooks the possibility that revocation of a visa petition may serve as a basis for rescinding the approval of an application for adjustment of status. Thus, revocation of the visa petition in the present matter is not an isolated procedure that deals solely with the issue of eligibility for the employment-based visa classification. Rather, the revocation will be treated as a preliminary step to the overall rescission process based on the reasoning that if the beneficiary is found to be ineligible for an employment-based visa classification, the erroneous approval of such visa classification cannot serve as a basis for granting the beneficiary's application for permanent resident status.

In summary, USCIS has determined that the petitioner failed to establish eligibility on two grounds. The AAO has since affirmed the director's findings in the decision issued on April 2, 2009. Although counsel generally disputes the propriety of issuing any adverse findings regarding the petitioner's eligibility for the immigrant visa petition given the beneficiary's adjustment of status, the actual grounds for revocation have not been disputed or overcome on motion.

Accordingly, the revocation will remain undisturbed for the above stated reasons, with each considered as an independent and alternative basis for revocation of the approval of the visa petition. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.