

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: OCT 11 2012

OFFICE: TEXAS SERVICE CENTER

FILE:

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 of the Texas Service Center revoked the previously approved immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner has "multiple retail businesses and locations" and seeks to employ the beneficiary as its Director/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.

On May 11, 2010, the director notified the petitioner of his intent to revoke approval of the I-140 petition based on a United States Citizenship and Immigration Services ("USCIS") investigation. On August 9, 2011, the director revoked the petition concluding that the petitioner did not submit sufficient evidence in rebuttal to the Notice of Intent to Revoke ("NOIR") and has not overcome the grounds for revocation.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General 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 450 (BIA 1987)).

On April 11, 2008, the petitioner filed the Form I-140 to classify the beneficiary as an employment-based immigrant. The director approved the petition. On May 11, 2010, the director notified the petitioner of his intent to revoke approval of the immigrant petition. In the notice of intent to revoke, the director stated the following:

A thorough review of your Petition for Alien Relative (Form I-140) indicates fraud was established. After an examination of the Texas Workforce Commissions' (TWC) documents, the Texas Service Center, and the Center Fraud Detection Operations (CFDO-TC) has determined that there are many inconsistencies found in the statements and documents that were submitted with Form I-140. [redacted] found that the [redacted] [documents] submitted by the petitioner are inconsistent with the staff, the staff size, and the wages paid to the employees and therefore [are] considered fraudulent.

In addition, the petitioner did not establish that he worked in a managerial/executive capacity for [the foreign company]. It is also unclear whether the beneficiary actually supervised any employees listed in the petitioner's statements. Absence of staffing may signal the presence of one person alone working minimal hours and is not performing at a managerial or executive level.

In response to the director's NOIR, the petitioner stated in a letter dated, June 9, 2010, that "we are in the process of acquiring [REDACTED] a [REDACTED] in [REDACTED] which is about 80 miles from our headquarters locations in [REDACTED]". The petitioner also stated that "we are looking at the purchase of [REDACTED] and [REDACTED]". The petitioner provided photographs of [REDACTED] a document entitled "Memorandum of Understanding between [the petitioner] and [REDACTED] the internet listing for [REDACTED] Houses, a job description for the beneficiary's duties with the foreign company and his current duties with the petitioner, an organizational chart of the petitioner dated May 17, 2010, current payroll records for the petitioner, and expired lease agreements made by the petitioner.

On August 9, 2010, the director revoked the petition concluding that the petitioner did not submit sufficient evidence in rebuttal to the NOIR and has not overcome the grounds for revocation.

Upon review, the AAO agrees with the director's decision and will affirm the revocation of the petition. Generally, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988).

On May 11, 2010, the director put the petitioner on notice of the intention to revoke the approval and the required evidence to overcome a revocation of the immigrant petitioner. *See* 8 C.F.R. § 103.2(b)(8). The petitioner was put on notice of the inconsistencies of the I-140 petition but in the response, the petitioner provided new evidence of a new business venture and did not provide any evidence, aside from a job description, of the petitioner's staffing levels at the time the I-140 petition was filed in April 2008.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for

evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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 met that burden.

ORDER: The appeal is dismissed.