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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 97 128 50058

Office: CALIFORNIA SERVICE CENTER

Date: OCT 05 2009

IN RE: Petitioner: [REDACTED]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

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.

Perry Rhew
Perry Rhew
fu Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-526. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion and will be remanded to the California Service Center solely for a determination of eligibility under the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002) [hereinafter the Public Law]. Should the Service Center determine that the petitioner is not eligible under the Public Law, the matter is to be certified back to this office for a determination on the merits of the motion.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5).

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that 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 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 Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

Nevertheless, section 11032 of the Public Law provides:

(b) Eligible Aliens Described.--An alien is an eligible alien described in this subsection if the alien—

(1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

(2) pursuant to such approval, timely filed before the date of the enactment of this Act an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and

(3) is not inadmissible or deportable on any ground.

Section 11032 of the Public Law continues:

(c) Treatment of Certain Applications.—

(1) Revocation of approval of petitions.--If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).¹

Section 11032 of the Public Law defines eligible aliens as those for whom the director had approved a given petition between January 1, 1995 and August 31, 1998 and subsequently revoked the approval of that petition. Pursuant to Section 11032(e)(1) of the Public Law, the removal of conditions requirements for aliens covered by this section are more lenient, allowing an alien to rely on job creation at any U.S. commercial enterprise in which the petitioner has invested.

The AAO has been holding this case in abeyance for promulgation of a regulation implementing the Public Law, which has yet to be published. Under the circumstances, this matter will be remanded to the California Service Center for a determination as to whether the revocation must be disregarded pursuant to the Public Law, thus rendering the motion effectively moot. Should the director find that the Public Law does not apply, the director should issue a written decision to that effect and certify the matter back to this office for an adjudication of the motion on its merits. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

¹ Although there are no regulations to clarify this issue, the language of this provision suggests that USCIS may need to only disregard revocations based *solely* on section 203(b)(5)(A)(ii) of Act, as amended.

ORDER: The matter is remanded to the director solely for the purpose of determining whether the revocation must be disregarded pursuant to the Public Law and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for purposes of an adjudication of the motion on its merits.