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**U.S. Citizenship
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Services**

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File: EAC-97-093-51307 Office: VERMONT SERVICE CENTER Date: FEB 18 2005

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant petition was initially approved by the Director, Vermont Service Center. Upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke the approval of the nonimmigrant petition, and his reasons therefore. After the petitioner failed to submit a timely response, the director revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as its President as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the state of New York that is engaged in import and export trade. The petitioner claims that it is a subsidiary of [REDACTED], located in Beijing City, China. The director approved the nonimmigrant petition on February 28, 1997.

Based on further review of the record, the director initially issued a notice of intent to revoke the approval on January 5, 1998. Upon discovering that the petitioner relocated to a new address, the director issued a second identical notice to the new address on May 8, 1998. The director determined that the petitioner failed to establish that: (1) the beneficiary possesses the requisite managerial or executive experience abroad; (2) the foreign entity is actively engaged in doing business; (3) the beneficiary's proposed employment involves executive or managerial authority over the new operation; and (4) the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The director further stated that the petitioner submitted numerous altered documents. After the petitioner failed to respond to the notice of intent to revoke, the director revoked the approval of the petition on September 18, 1998.

On appeal, the petitioner submits a brief and additional evidence addressing the issues discussed by the director in the notice of intent to revoke the petition. The evidence of record clearly shows that both the notice of intent to revoke and the final notice of revocation were properly sent to the petitioner's address of record. *See* 8 C.F.R. § 103.5a. Therefore, the AAO concludes that the notice of intent to revoke the petition was properly issued and delivered to the petitioner.

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, 570 (BIA 1988). For this reason, the decision of the director will be affirmed and the appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states that "[t]he 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 [of the Act]."

A notice of intent to revoke approval of 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. *Matter of Li*, 20 I&N Dec. 700, 701 (BIA 1993); *Matter of Arias*, *supra* at 569-70; *Matter of Ho*, *supra* at 590; *Matter of*

Estime, 19 I&N Dec. 450 (BIA 1987). 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*, supra at 590.

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of a petition's approval, provided the director's revised opinion is supported by the record. *Id.*

Notwithstanding the Service's burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner still bears the burden of proof to establish eligibility for the benefit sought. *Id.* at 589; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); see also *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

In the present case, the director did raise sufficient factual issues to support the revocation. The notice of intent to revoke and the subsequent revocation were based on evidence that was in the record at the time the notice was issued. The petitioner did not offer a timely explanation or rebuttal to the notice of intent to revoke and has not overcome the deficiencies raised by the director.

Notwithstanding the petitioner's submission of evidence on appeal, the petitioner failed to offer any explanation or rebuttal to the director's properly issued notice of intent to revoke. Accordingly, pursuant to *Matter of Arias*, supra, the director's decision to revoke the petition's approval will not be disturbed.

The petitioner bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.