U.S. Department of Justice

Immigration and Naturalization Service

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 27 2003

IN RE: Petitioner: [redacted]
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: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: Approval of the preference visa petition was revoked by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration and entry of a new decision.

The petitioner is a corporation which was organized in the State of California in May 1989. The petitioner claims to be the subsidiary of Shenyang Metals & Minerals Import and Export Corp., located in China. It seeks to employ the beneficiary as the vice president of the enterprise. Accordingly, the petitioner endeavors to classify the beneficiary as an immigrant multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director revoked approval of the petition based upon the determination that the petitioner had failed to respond to the Service's notice of intent to revoke the petition. The record indicates that the intent notice was dated July 23, 2001.

On appeal, counsel asserts that the petitioner submitted a timely response to the notice of intent and submits evidence in support of that claim. Counsel's evidence includes a photocopied postal return receipt which indicates that the Service received documentation on August 17, 2001. Counsel also submits a cover letter, dated August 14, 2001, indicating that his response to the Service's notice of intent to revoke consisted of a brief, tax documents, and an employment verification letter.

The director's conclusion that the petitioner failed to respond to the Service's notice of intent to revoke its petition is erroneous and therefore must be withdrawn. The matter will be remanded for further consideration and entry of a new decision.

The director shall take note of the statements contained in the record, where the beneficiary clearly indicates that the overseas parent company closed its U.S. subsidiary in 1998 as alleged in the notice of intent to revoke. While this admission would constitute proper grounds for the revocation of the petition's approval, this issue was not raised by the director's decision and is not properly before the Administrative Appeals Office (AAO). Therefore, the AAO cannot address this issue at this time. However, it is noted that the termination of the employer's business warrants the automatic revocation of the petition's approval pursuant to 8 C.F.R. 205.1(a)(3)(iii)(D).

Accordingly, this case will be remanded for the purpose of a new decision in which the director must address the viability of this petition in light of submitted evidence and the beneficiary's admission that the U.S. petitioner is no longer doing business.

ORDER: The director's decision of December 31, 2001 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.