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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

[redacted]

File: WAC 97 048 51420 Office: CALIFORNIA SERVICE CENTER Date: JAN 22 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center approved the employment-based preference visa. After subsequent review, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of her intent to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition on December 22, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The director's decision shall be withdrawn and the case will be remanded to the director for entry of a new decision.

The petitioner is a California corporation that engages in trade, investment and touring. It seeks to employ the beneficiary as its president and, therefore, endeavors to classify the beneficiary as a 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 her approval of the petition because evidence in the record failed to show that (1) the beneficiary worked in a primarily executive or managerial capacity, and (2) the petitioner had the ability to pay the proffered wage.

On appeal, counsel states that the director cannot revoke her approval of the petition on the grounds outlined in the revocation notice because the petitioner was never provided an opportunity to submit evidence to show that the beneficiary's duties are primarily executive or managerial in nature, or that the petitioner has the ability to pay the proffered wage.

8 C.F.R. 205.2(b) states:

> *Notice of intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

On July 7, 1998, the director issued to the petitioner a Notice of Intent to Revoke because she had learned that the petitioner was no longer engaged in the business of import/export; the petitioner was engaged in arranging tours from China. The director concluded that the petitioner did not need the services of the beneficiary as a multinational executive or manager because the petitioner ceased its import/export operations. The director provided the petitioner 30 days to submit evidence in rebuttal to the stated grounds for revocation.

The director revoked her approval of the petition on December 28, 1998, citing that the petitioner failed to submit evidence in rebuttal to the proposed ground for revocation. However, the director subsequently reopened the proceeding on a Service motion, citing that the petitioner had timely responded to the Notice of Intent to Revoke. The director affirmed her original decision to revoke her approval of the petition for the following reasons:

> The Center Director approved this petition on December 18, 1996. Subsequently, the Service learned during the District Adjustment interview that the company is no longer conducting its primarily business, that it has only 3 subordinate employees and [that the beneficiary] was not able to conclusively describe her management duties. In short, the beneficiary was not able to satisfy the Service that she is a fully qualified and competent multinational employee. . . . Furthermore, financial documentation submitted are [sic] not persuasive evidence that the petitioner has the ability to pay the wages promised in the job offer and the costs of doing business in the U.S.

On appeal, counsel states that in the Notice of Intent to Revoke, the director only raised the issue of whether the petitioner was still engaged in its primary business, which is the import and export of goods. Counsel notes that the director did not question whether the proffered position involved primarily executive or managerial duties or whether the petitioner had the ability to pay the proffered wage; yet, the director revoked her approval of the petition based upon these issues.

As the record is presently constituted, counsel's statements on appeal are persuasive. In the Notice of Intent to Revoke, the director only noted that she had received information that the petitioner was no longer engaged in the import/export trade. Thus, the petitioner's evidence in rebuttal to the director's Notice of Intent to Revoke only focused on this one issue. The director's failure to raise other bases for seeking to revoke her approval of the petition in the Notice of Intent to Revoke, prevented the petitioner from being able to prepare a full and meaningful argument in rebuttal to the director's reasons for revocation. The petitioner did not prepare any evidence to rebut the director's conclusion in the revocation notice that the proffered position did not entail primarily executive or managerial duties, or that the petitioner did not have the ability to pay the proffered wage.

Accordingly, this case will be remanded to the director so that she may issue a new Notice of Intent to Revoke that clearly states the alleged ground(s) for revoking the approval of the petition. The director should allow the petitioner to present an argument or evidence in rebuttal, and may request any additional evidence

deemed necessary to assist her with her determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision of December 22, 1999 is withdrawn, and the case is remanded to her for entry of a new decision, which if adverse to the petitioner, is to be certified to the Associate Commissioner for review.