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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

PUBLIC COPY

[redacted]

MAY 20 2003

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

Identifying data deleted to prevent clearly unwarranted

INSTRUCTIONS:
This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center initially approved the preference visa petition. Subsequently, the beneficiary applied for adjustment of status. Upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of his intention to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition on July 3, 2002. The matter is now before the Administrative Appeals Office on appeal. The director's decision shall be withdrawn. The matter shall be remanded to the director for entry of a new decision.

The petitioner is a California corporation that imports and exports various types of merchandise. It seeks to employ the beneficiary as its project manager 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 his approval of the petition on the grounds that: (1) a qualifying relationship does not exist between the petitioner and the foreign entity; (2) the beneficiary was not employed in a managerial or executive capacity by a qualifying foreign entity for the required period of time; (3) the proffered position is not in an executive or managerial capacity; and (4) the petitioner does not have the ability to pay the beneficiary's wage of $500 per week.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the petitioner was not apprised of derogatory evidence prior to the revocation of the petition's approval.

Pursuant to section 205 of the Immigration and Nationality Act, 8 U.S.C. § 1155 (1982), the director may, at any time, seek to revoke the approval of a visa petition for what he deems "good and sufficient cause." The director's realization that he made an error in judgment in initially approving a visa petition may, in and of itself, be good and sufficient cause for revoking the approval, provided the director's revised opinion is supported by the record. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

A review of the record reveals that on February 28, 2002, the director issued a Notice of Intent to Revoke to the petitioner. According to the director, the Los Angeles district director had requested from the Officer-in-Charge (OIC) in Guangzhou, China, an investigation into the claimed parent/subsidiary relationship between the foreign entity and the petitioner. The district director sought to verify the authenticity of the documents that had been submitted during the beneficiary's adjustment of status interview at the Los Angeles district office. The director stated in the Notice of Intent to Revoke that, as of the date of the Notice, the investigation was still pending. The director, however, requested additional evidence from the petitioner because

the beneficiary's adjustment of status interview raised questions regarding whether: (1) the beneficiary had been employed by the alleged foreign entity in a managerial or executive capacity; (2) the petitioner would employ the beneficiary in a managerial or executive capacity; (3) the existence of a qualifying relationship between the U.S. and foreign entities; and (4) the petitioner has the ability to pay the beneficiary's salary. The director provided the petitioner 30 days in which to offer any evidence in rebuttal.

The petitioner responded to the director's Notice of Intent to Revoke on March 28, 2002. On that same day, the director also received the report of the investigation that the OIC had conducted at the request of the Los Angeles district director. This report indicated that the investigator could not locate the alleged foreign entity.

On July 3, 2002, the director revoked his approval of the petition. Although the director received the OIC's investigative report prior to issuing the Notice of Revocation, the director did not inform the petitioner of the adverse information. In the Notice of Revocation, the director, for the first time, apprised the petitioner of the results of the investigation and concluded that: "all the evidence submitted are [sic] in question, ESPECIALLY the qualifying relationship between the two entities." (Emphasis in original.)

Bureau regulations affirmatively require a director to provide all derogatory information to a petitioner if that information will result in an adverse decision. 8 C.F.R. § 103.2(b)(16)(i). As the director clearly stated in the Notice of Revocation that the derogatory evidence raised questions regarding the reliability and sufficiency of the remaining evidence offered in support of the visa petition, it was incumbent upon the director to offer the petitioner an opportunity to submit evidence in rebuttal to the allegations contained in the report. As the director failed to provide this opportunity to the petitioner, the matter will be remanded so that the director may: (1) consider the evidence that the petitioner has submitted on appeal in response to the OIC's report; and (2) enter a new decision. The director may request any additional evidence deemed necessary to assist him with his 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 July 3, 2002 decision to revoke the approval of the petition is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.