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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: WAC 96 035 51233 Office: CALIFORNIA SERVICE CENTER Date: MAY 20 2003

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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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. On the basis of new information received and on 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 notice of her intention to revoke the approval of the preference visa petition, and her reasons for doing so. 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 on appeal. The appeal will be dismissed. The approval of the petition will be revoked and the petition will be denied.

The petitioner is a California corporation that claims to import and sell machinery and tools. It seeks to employ the beneficiary as its president/general 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).

Based on an investigation by the Los Angeles district office in conjunction with the Officer-in-Charge at the U.S. Embassy in Hong Kong, the director issued a Notice of Intent to Revoke on July 3, 2001. According to the Notice, the district director requested an investigation into the claimed parent/subsidiary relationship between the foreign entity and the petitioner in order to verify the authenticity of the documents that had been submitted. The director noted that the petitioner claimed to be a subsidiary of the foreign parent company, Guangdong Machinery & Equipment Import and Export Group Corporation (Guangdong Machinery), of the People's Republic of China (China).

According to the director, the investigation revealed that the foreign parent company decided to close the petitioner's operations in 1997 because the petitioner was operating at a loss. The director also stated that the foreign parent company claimed that it had lost contact with the beneficiary since 1997, and that it was unaware of the beneficiary's application to adjust his status. Based upon these allegations, the director provided the petitioner a period of 30 days to offer any evidence in rebuttal. After the petitioner failed to respond to the Notice of Intent to Revoke, the director revoked the approval of the petition on September 17, 2001.

On appeal, counsel states that the director did not properly revoke the approval of the petition because the director mailed the Notice of Intent to Revoke to the wrong address, despite the petitioner's notification to the Bureau of its change of address. Counsel contends that the revocation of the petition's approval was erroneous because, on appeal, the petitioner submits sufficient evidence to rebut the director's allegations.

The Bureau is not persuaded by counsel's claim that the petitioner did not receive the director's Notice of Intent to Revoke, or that the petitioner advised the Bureau of a change of address. Counsel presents no evidence, other than her own statement, that that the petitioner advised the Bureau, in writing, of a change in address prior to the issuance of the director's Notice of Intent to Revoke. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record contains a Form G-28 that was signed by the beneficiary on September 25, 2001, a date subsequent to the issuance of the Notice of Intent to Revoke on July 3, 2001 and the Notice of Revocation on September 17, 2001. The petitioner's address on the Form G-28 matches exactly the address to where the director mailed both notices. Accordingly, it is concluded that the director properly mailed the notices to the petitioner's last known address, as listed on the I-140 petition. *See* 8 C.F.R. § 103.5(a)(2)(iii).[1]

The Bureau notes that the director also mailed the Notice of Intent to Revoke and the Notice of Revocation to the petitioner's attorney of record at the time, Land Wayland. Service of a Bureau decision on a petitioner's attorney of record is considered proper service on the petitioner. *See* 8 C.F.R. § 103.5a. Again, the petitioner did not notify the Bureau that it retained new counsel under after service of the notices. Additionally, counsel did not inform the director of the petitioner's change of address until it mailed a January 8, 2002 letter to the California Service Center.

Generally, the decision to revoke approval of an immigrant petition will be sustained, 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. *Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). For this reason, the decision of the director will be affirmed and the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The approval of the petition is revoked and the petition is denied.

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[1] The Bureau notes that the director mailed the Notice of Intent to Revoke to the same address as the Notice of Revocation, which the petitioner apparently received.