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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[redacted]

FEB 0 2 2004

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

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3).

ON BEHALF OF PETITIONER:

[redacted]

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 Citizenship and Immigration Services (CIS) 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 preference visa petition was approved by the Director, California Service Center, on March 28, 2001. On April 17, 2001, based the approved petition, the beneficiary filed Form I-485 to adjust her status in the United States to permanent resident. In reviewing the adjustment application, the director determined that the preference visa petition had been approved in error. The basis for the director's determination was that the petitioner did not have the ability to pay the beneficiary the proffered wage starting from the date the beneficiary's priority date was established, and continuing to the present. Accordingly, on March 26, 2003, the director revoked approval of the petition, and denied the beneficiary's application for adjustment.

The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director revoking approval of the petition will be withdrawn, and the petition will be remanded for further action and consideration.

Pursuant to regulations at 8 C.F.R. § 204.1(a)(3)(iii), approval of an employment-based petition under section 203(b) of the Immigration and Nationality Act (the Act) is automatically revoked upon invalidation of the labor certification in support of the petition, upon the death of the petitioner or beneficiary, upon written notice of withdrawal by the petitioner, or upon termination of the employer's business.

In all other cases, notice of intent to revoke must be provided to the petitioner. Regulations at 8 C.F.R. § 205.2 state:

> (a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in section 205.1 when the necessity for the revocation comes to the attention of this Service.
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> (b) *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.
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> (c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

In this case, the director did not provide the petitioner with notice of intent to revoke. Accordingly, this matter is remanded to the director for compliance with the above regulatory requirements. The director is to consider the documentation the petitioner has provided on appeal, and he must allow the petitioner to submit any additional evidence within a reasonable period of time.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.