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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.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 20 2002

IN RE: Petitioner: [Redacted]
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 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 that 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: The employment-based preference visa petition was approved by the Director, California Service Center, in September of 1994. On the basis of new information received and on further review, the director properly served the petitioner with a notice of intent to revoke the approval of the immigrant petition on September 23, 1996. On August 2, 1998, the director revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the state of California in June of 1991 under the name of ANEC International Trading, Inc. The petitioner later changed its name to Yee Top, Inc. in August of 1993. The petitioner is engaged in the import, export, and trading business. It seeks classification of 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 ultimately revoked approval of the petition based on information obtained from a consular investigation that was conducted on February 16, 1996, wherein the petitioner's parent company could not be found to exist.

On appeal, counsel for the petitioner asserts that it has sufficiently demonstrated that the petitioner's parent company has continuously been in operation since its inception. The petitioner submits additional evidence for the record.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

(i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

The issue in this proceeding is whether the petitioner has established its claimed parent company was doing business at the time of filing the petition and thus the beneficiary could be considered a *multinational* executive or manager.

8 C.F.R. 204.5(j)(2) defines the term "multinational" as follows:

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

8 C.F.R. 204.5(j)(2) defines "doing business" as follows:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

The petition was filed on August 26, 1994.¹ The petitioner

¹ The original file has been lost and the appellate review is being conducted on a reconstructed file.

submitted a letter dated August 22, 1994 in support of the visa petition that stated the petitioner's claimed parent company, Dongfang Trading Corporation, was established in May of 1985. The petitioner indicated that its claimed parent company was engaged in the import and sale of construction material, electric appliances, machinery, electric products and chemical material, as well as property development and department stores. The petitioner claimed that the overseas parent company employed 90 people. The petitioner also provided translated tax documents for its claimed parent company for the tax periods from January 1994 through June 1994, as well as for the year of 1992. The petitioner included an abbreviated organizational chart depicting a general manager, two deputy general managers, an assistant to the general manager, and 80 employees. Finally, the petitioner submitted a partially translated balance sheet dated December 31, 1992.

As noted above, the director initially approved the petition and the beneficiary filed an application for adjustment of status on October 6, 1994. The Service interviewed the beneficiary on February 6, 1995 and, as a result of the interview, requested that the Investigations Section of the American Embassy in Shenyang, China verify the existence of the petitioner's claimed parent company. The investigator found that the claimed parent company, Dongfang Trading Corporation, no longer existed. The investigator found that the local authority had closed "Dongfang Entertainment City," located at 100 Nan I Ma Ru, Heping District, Shenyang City, because of funding problems and that the entire staff had been dismissed. The investigator did find a company with the same name as the petitioner's claimed parent company but at a different location. An unidentified individual at the company informed the investigator that it did not have a United States branch. The results of the investigation were conveyed to the petitioner in a notice of intent to revoke the approval of the petition dated September 23, 1996.

In response to the notice of intent to revoke, the petitioner through its counsel submitted a letter stating that "[i]n fact, the company has moved to a new location, and has been and is operating. There are currently 13 employees, and the company is doing substantial business." The petitioner provided a translated copy of the claimed parent company's business license dated January 27, 1996 identifying the location of Dongfang Trading Corporation as No. 86, Bei Yi Jing Street, Shenhe District, Shenyang. The petitioner also provided a copy of a lease agreement with the claimed parent company as lessee for the same address, effective March 15, 1995. The petitioner further provided pictures of a building with a sign in Chinese and English showing the English name of Shen Yang East Trading Co. The other pictures provided by petitioner revealed no identifying names or labels. The petitioner provided copies of two bills of lading dated July 29, 1995 and October 20, 1995. Finally, the petitioner provided a partially translated balance sheet for the

claimed parent company dated December 31, 1994 and a partially translated profit and loss statement dated December 1994. The profit and loss statement reflected net profit of 2,451,423 RMB, although the translated dollar amount was not provided.

After reviewing the petitioner's response and additional evidence, the director revoked the approval of the visa petition on August 2, 1998.

On appeal, counsel for the petitioner asserts that the petitioner's parent company has been doing business since its inception. Counsel states that "[d]uring the period in question, the China company experienced some downsizing, requiring it to reduce its payroll and change location. During the period in question, the China company was in the process of moving its principal offices." Among other documents, the petitioner also submitted the following:

Business license for Dongfang Trading Corporation of Shenyang City, dated January 27, 1996 and identifying the address as No. 86, Bei Yi Jing Street, Shenhe District, Shenyang;

Tax registration certificate dated January 3, 1996;

Certification from an unknown entity indicating that Dongfang Trading Corporation of Shenyang City has been established since 1985 and had moved its operation in March of 19965 [sic];

A translated balance sheet in RMB currency for Dongfang Trading Corporation of Shenyang City for the period of December 30, 1995;

A translated profit and loss statement for Dongfang Trading Corporation of Shenyang City dated December 1995 reflecting total profit of 1,659,430 RMB for the year to date;

Business Income Tax Forms for Dong Fang Trading Corporation of Shengyang City for the year 1994, reflecting tax paid in the amount of 717,191 RMB;

Business Income Tax Forms for Dong Fang Trading Corporation of Shengyang City for the year 1995, reflecting tax paid in the amount of 245,196 RMB;

A statement of employees' payroll for June 1995, the translation reflecting Huang Dien Xiang was paid a net salary of 666 RMB; and

A partially translated bank reports for Dong Fang Trading Corporation dated July 1, 1994, August 1, 1994,

August 31, 1994, and December 31, 1994, and for each month of 1995 except April 1995.²

Counsel's assertion is not persuasive. The documentary evidence submitted for the record is insufficient to establish that the claimed parent company was engaged in the regular, systematic, and continuous provision of goods and/or services at the time of the petition's filing, August 26, 1994. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

The submitted evidence does not establish that the claimed overseas parent company was doing business through the regular, systematic, and continuous provision of goods or services at the time the petition was filed. 8 C.F.R. 204.5(j)(2). The record reflects only two bills of lading for small shipments from the foreign entity to other entities. These shipments took place in July and October of 1995, after the filing of the petition. The record contains no information regarding the conduct of any kind of business at the time the petition was filed up until the date of the beneficiary's adjustment interview and through the first half of the year of 1995. In addition, contrary to petitioner's statement that its parent company downsized but still continued to employ 13 people, the petitioner has only provided a translated copy of salary paid to one individual in June of 1995. The petitioner has not provided evidence that its claimed parent company employed anyone at the time the petition was filed.

Furthermore, the petitioner has provided documents that indicate its claimed parent company has had a bank account in China except for the months of September, October and November of 1994 and April of 1995. The bank reports alone are not sufficient to establish that the foreign entity was continuously engaged in providing good or services, only that the foreign entity had funds in China in those months. The business income tax forms also are insufficient to establish that the foreign entity was engaged in business at the time the petition was filed. The record does not contain evidence of the premises occupied by the foreign entity prior to March 1995. The petitioner has not provided evidence of a lease agreement or other documentation that would indicate its claimed parent company had established offices at 100 [REDACTED] Heping District or any other location at the time the petition was filed in August of 1994.

Finally, it is noted that the petitioner has submitted the overseas company's claimed Business Income Tax Returns for the

² As the documents are not probative as to whether the claimed parent company was doing business at the time of filing, the list does not include the submitted documents which are dated after 1995.

periods both before and after "the China company experienced some downsizing." It is noted that the tax returns that were originally submitted with the petition possess a different tax identification number than the tax returns submitted after the issuance of the director's notice of intent to revoke. For example, the Business Income Tax Form dated January 22, 1995 possesses the identification number "210102200140414," whereas the Business Income Tax Form dated December 2, 1992 possesses the identification number "020494." This discrepancy raises the question of whether the two companies are actually the same entity or whether the later tax returns were filed for a company that was organized to replace the original. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

Upon review, the record does not establish that the claimed parent company was providing goods or services on a regular, systematic and continuous basis at the time the petition was filed. As previously noted, the petitioner must establish that it was eligible for the claimed benefit at the time the petition was filed. Matter of Katigbak, *supra*. The petitioner has not established that the claimed parent company was a qualifying entity at the time of filing, in that it was conducting business in two or more counties.

Although the appeal will be dismissed for the previously addressed reason, an additional note must be made for the record. Beyond the decision of the director, the record does not reflect a qualifying relationship between the petitioner and the claimed parent company.

8 C.F.R. 204.5(j)(2) states in pertinent part:

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal



control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

The petitioner initially provided the articles of incorporation of [REDACTED], which is dated June 17, 1991, and the minutes of the first organizational meeting, which was held on July 15, 1991. The minutes reveal that the corporation was authorized to issue one million shares of stock and that 50,000 of its shares were issued in the following manner:

[REDACTED]	30,000 shares
[REDACTED]	10,000 shares
[REDACTED]	7,500 shares
[REDACTED]	2,500 shares

The petitioner provided copies of stock certificates one through four, which were issued on June 18, 1991 to the individuals noted above in the proportion listed next to their name.

The petitioner also provided minutes of a special meeting of the Board of Directors of ANEC International Trading Inc. that was held August 23, 1993, although the minutes are actually dated July 7, 1993. The minutes reflect that the board of directors resolved to change the corporation's name and "to issue 56,250 shares common stock under the new name of [REDACTED] ' to Dongfang Trading Corporation, a [REDACTED]" The petitioner further provided a certificate of amendment of the articles of incorporation which was filed on September 20, 1993 with the California Secretary of State. The certificate of amendment provides that the name of the corporation is now Yee Top, Inc., the petitioner in this proceeding, and that "[t]he total number of outstanding shares of the corporation is 50,000." The petitioner then claims in the initial petition that Dongfang Corporation invested \$56,250 in the petitioner in October of 1993 and owned 52 percent of the shares of common stock of the petitioner.

First, it must be noted that the petitioner did not submit any evidence to establish that the corporation issued 56,250 shares of stock to the claimed parent company. The record does not contain a copy of any stock certificates issued to the claimed parent company, Dongfang Trading Corporation, nor does the record contain evidence of the claimed \$56,250 investment. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec.

190 (Reg. Comm. 1972).

Furthermore, although the petitioner claims that the parent company made its qualifying investment in October 1993, the petitioner's 1993 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, does not reflect the claimed investment. Although the tax return covers the period of the company's claimed investment, the Schedule L Balance Sheet, at line 22, reflects that there was no increase in the petitioner's capital stock during this period. Instead, the tax return demonstrates that the petitioning company maintained \$50,000 in common stock, as originally issued by [REDACTED] during the period between June 1, 1993 and May 31, 1994.

Finally, the petitioner's 1993 IRS Form 1120, Schedule K, at line 4, indicates that the petitioning corporation is not a subsidiary in an affiliated group or parent-subsidiary controlled group. On Schedule K at line 10, the petitioner further indicates that no foreign person at any time during the tax year owned directly or indirectly, at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote, or (b) the total value of all classes of stock of the corporation. This information directly contradicts the petitioner's claimed relationship with both the claimed parent company and a second foreign corporation.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between the United States and a foreign entity for purposes of this immigrant visa classification. Matter of Church Scientology International, 19 I&N Dec. 593 (BIA 1988); see also Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (BIA 1986) (in nonimmigrant visa proceedings); Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982) (in nonimmigrant proceedings). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. Matter of Church Scientology International, at 595.

The petitioner has submitted confusing and inconsistent information regarding the petitioner's ownership and control. The petitioner has not submitted stock certificates, the corporate stock certificate ledger or the stock certificate registry to evidence that a transfer of the capital stock of the petitioner was made to Dongfang Trading Corporation, the claimed foreign entity in this case. In addition, the certificate of amendment filed with the California Secretary of State indicates that there are only 50,000 outstanding shares of the petitioner. There is no record that the petitioner at some subsequent date authorized the issuance of additional shares and that such shares were issued to the claimed parent company. Furthermore, the 1993 IRS Form 1120

contained in the record reflects that the corporation is not a subsidiary and further that no foreign entity maintains an ownership interest in the company. As the petitioner's tax returns directly contradict the claimed parent-subsiary relationship and the other documentation regarding ownership and control of the petitioner is inconsistent, the petitioner has not established that a qualifying relationship exists for purposes of this petition.

Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Matter of Ho, supra. For this additional reason, the petition may not be approved.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, supra at 590 (citing Matter of Estime, 19 I&N 450 (BIA 1987)). In the present case, the decision to revoke will be affirmed.

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.