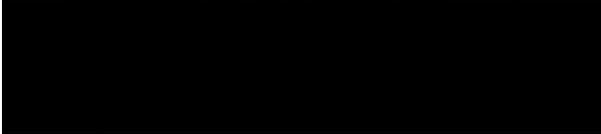


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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



File: WAC 96 099 50033 Office: CALIFORNIA SERVICE CENTER

Date: OCT 23 2003

IN RE: Petitioner:
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:



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 Citizenship and Immigration Services 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 immigrant visa petition was approved by the Director, California Service Center. Upon subsequent review of the petition, including an investigator's report from the United States consulate in Guangzhou, the director informed the petitioner of her intent to revoke the approved petition. On March 11, 1999, the director revoked the approval of the petition as no rebuttal to the notice of intent to revoke had been received. On March 17, 1999 the petitioner provided evidence that it had timely filed a rebuttal to the notice of intent to revoke. The director on her own motion reopened the proceeding and considered the evidence filed in response to the notice of intent to revoke. On December 30, 1999 the director found that the petitioner had not overcome the grounds of revocation. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed.

The petitioner claims to be engaged in the import and export business. The petitioner seeks to employ the beneficiary in the United States as its president. Accordingly, it seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established its claimed parent company in China existed and as such that the beneficiary could not have worked one year as an executive or manager for a qualifying entity.

On appeal, counsel for the petitioner notes that the issue is whether the petitioner's parent company existed and whether the beneficiary had actually worked for the parent company. Counsel states that adequate evidence had been presented to the director including contemporary newspaper reports of the opening of a steel plant in the local town. Counsel also states that if the United States consulate field investigator had attempted to find the plant, but did not, the investigator must have gone to a different town.

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.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation, or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

The United States petitioner is a California company incorporated in June 1994. The claimed qualifying foreign entity was allegedly established in 1992. The petitioner provided a copy of a newspaper clipping with pictures of a ceremony, pictures of individuals giving speeches, and pictures of steel pipe. The translation accompanying the newspaper clipping indicates that the Sha Hu (An Shan) Steel Plant in Enping County is holding a production ceremony in 1994. The petitioner further submitted a translation of a photocopy of a business license for the alleged parent company. The petitioner's claimed parent company in a handwritten letter indicated that the beneficiary had been employed as the sales manager of the supply and marketing department of the foreign entity from June 1992 to October 1994.

In the notice of intent to revoke, the director informed the petitioner that the United States Consulate in Guangzhou, China had attempted to locate the claimed foreign entity but initially had been unsuccessful when using the phone numbers provided by the record. The United States Consulate investigator determined that the phone numbers provided were either disconnected or private residences. The investigator eventually talked with a person identifying himself as a business agent for the claimed foreign entity. This individual identified the beneficiary as the planning director of the claimed foreign entity who had been employed by the foreign entity since 1994. The director stated in the notice of intent to revoke that the petitioner had not established the existence of the parent company. The director further stated that the business agent for the claimed foreign entity had stated that the beneficiary had begun his employment with the foreign entity in 1994; thus, the beneficiary who also entered the United States in 1994 could not possibly have worked for the foreign entity a complete year prior to entry into the United States.

In the rebuttal to the notice of intent to revoke, counsel for the petitioner asserted that the claimed parent company continued to have office buildings and steel mills in Enping County, Guangdong Province. Counsel re-submitted the same newspaper clipping and translation earlier submitted as well as other photographs allegedly of the parent company's steel plant. Counsel for the petitioner also re-submitted the handwritten letter allegedly from the president of the foreign entity stating

that the beneficiary had been employed by the claimed foreign entity from June 1992 to October 1994. Counsel asserted that the individual identifying himself as a business agent for the foreign entity had started work for the claimed foreign entity in 1995 and did not know the beneficiary.

The director determined that the evidence submitted in rebuttal to the notice of intent to revoke was contradictory to the information from the consulate investigator and insufficient to overcome the grounds for revocation.

On appeal, counsel for the petitioner does not submit a brief and simply asserts that adequate evidence of the existence of the foreign entity has been submitted.

Counsel's assertion is not persuasive. The photocopies of newspaper clippings allegedly containing photographs of the petitioner's parent company do not readily identify the petitioner's parent company. It is not possible to identify the office buildings and steel mills depicted in the photographs as photographs associated with the petitioner's parent company. The photographs do not bear any easily distinguishable characteristics relating to the claimed parent company. The translated text of the newspaper clipping of a company's production ceremony, although identifying the petitioner's purported parent company, remains questionable in light of the investigative report filed by the United States consulate investigator. Likewise, the photocopy of the handwritten note of the president of the purported parent company is questionable in light of the investigative report. The business license submitted is a photocopy and bears no mark of certification.

The record contains insufficient independent verifiable evidence of the petitioner's parent company and the time period that the beneficiary allegedly worked for the foreign entity. As the petitioner bears the burden of proof in these proceedings, assertions of counsel, and photocopies of newspaper clippings, a photocopy of a business license, and a letter will not suffice to overcome the director's decision based on the investigative report. 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).

The petitioner has had several opportunities to provide additional documentary evidence to establish the existence of the foreign entity and to establish the time period the beneficiary worked for the foreign entity. The petitioner and its counsel have chosen to re-submit information first submitted with the petition. The investigative report raised questions regarding the beneficiary's employment with the foreign entity as well as

the existence of the foreign entity. These questions were not sufficiently answered, explained or rebutted by the petitioner.

In addition, review of the record reveals other issues that were not addressed by the director. It is noted that the director did not address the issue of the work performed by the beneficiary for the foreign entity and whether this work constituted the work of a manager or executive. The director also did not address the issue of the work to be performed by the beneficiary for the United States entity and whether the beneficiary would be working in a managerial or executive capacity. Regarding these issues, the record does not contain sufficient evidence to establish the beneficiary's overseas managerial or executive experience or the beneficiary's proposed managerial or executive experience for the petitioner.

As the decision of the director to revoke the approval of the petition is not overcome by the information submitted in rebuttal nor counsel's assertions on appeal, these additional issues are not examined further.

ORDER: The appeal is dismissed.