



U.S. Citizenship
and Immigration
Services

B4

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 07 2004

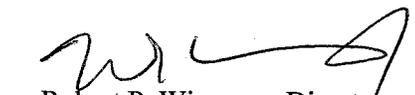
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The Director, California Service Center, denied the present petition on March 22, 1996 and approved a subsequently filed employment-based visa petition on August 8, 1996. The Administrative Appeals Office (AAO) sustained an appeal on the denied employment-based visa petition on October 13, 1998. The director now requests that the AAO, as the last decision-maker in these proceedings, reopen the decision so that the director may proceed with a notice of intent to revoke the approved petition. The AAO will decline to reopen the proceeding.

Due to the complicated procedural history of this case, a full discussion of the facts and law follow. Hainan Fuda – 3W Magnetic & [REDACTED] initially filed an employment-based visa petition (WAC 96 086 50936) for the beneficiary on January 31, 1996. In a letter accompanying the petition, counsel for the petitioner stated that World Data & Media Inc. is the Los Angeles branch office of Hainan Fuda. Counsel also stated that [REDACTED] owned 100 percent of World Data & Media Inc.'s stock.

On March 22, 1996 the director denied the petition after determining that the petitioner (Hainan Fuda) is a foreign entity requesting the services of the beneficiary as an executive manager. The director cited 8 C.F.R section 204.5(j)(1) requiring that a United States employer file the I-140, Immigrant Petition for Alien Worker, and that the United States employer furnish a job offer that indicates the beneficiary will be employed in the United States in a managerial or executive capacity. The director concluded that Hainan Fuda is not a United States employer and that the record did not contain evidence of a job offer from a United States employer.

Counsel timely filed an appeal explaining that the I-140 petition had mirrored the petitions filed in the initial L-1A intracompany transferee petition and extension. As the Immigration and Naturalization Service (INS) had not objected to the identity of the petitioner and to remain consistent, counsel indicated he had submitted the I-140 petition using the foreign entity as the petitioner. Counsel asserted that World Data & Media Inc is the true United States employer in the proceeding. Counsel claimed that the identity of the petitioner was a technical error and re-submitted evidence of the petitioner's sole stock certificate and its articles of incorporation. The record also contained World Data & Media Inc.'s Internal Revenue Service (IRS) Forms 1120, U.S. Corporate Tax Return, identifying Hainan Fuda as its 100 percent stockholder.

On October 13, 1998 the AAO found that [REDACTED] wholly owned World Data & Media Inc. and that sufficient evidence of Hainan Fuda's affiliation with World Data & Media Inc. had been submitted. The AAO sustained the appeal and approved the petition.

In addition to filing the appeal, counsel submitted a new petition (WAC 96 137 51006) identifying the petitioner as World Data & Media Inc. on April 11, 1996. The director requested further evidence on May 31, 1996. The petitioner responded on July 29, 1996 and the petition was approved on August 8, 1996. CIS records reveal that this petition remains approved and that no action has been taken to revoke this subsequently filed petition.

On February 19, 1997 the beneficiary filed his I-485, Application to Register Permanent Resident or Adjust Status, based on the second Form I-140 that had been approved by the director. On July 18, 1998 an INS officer requested an overseas investigation to determine whether Hainan Fuda had employed the beneficiary

and whether a qualifying relationship existed and continued to exist. On March 5, 2002, not having received a response for an overseas investigation, the INS Los Angeles district director requested that the approved petition be revoked.

On August 8, 2002, an overseas INS investigator visited the petitioner's parent company's premises. The investigator determined that: (1) the beneficiary had worked for the parent company as a sales manager from 1992 to 1994; (2) the petitioner's business had not been very good so the parent company had not required the subsidiary to turn over any funds; (3) the parent company had invested \$200,000 in the United States company in 1994 and had not invested any more funds; (4) the parent company had changed its business from producing 3M floppy discs to selling floor boards in December 1999; (5) the parent company had been involved in a joint venture with a Hong Kong company but that had ceased in 1994. Although the investigative report raises some questions, it is noted that the report confirms the essential elements of eligibility. As noted previously, the director has not taken any action to revoke the second petition based on this report.

On May 21, 2002, the director requested that the AAO remand the proceeding so that the service center could address several issues. Briefly, the director observes that the record does not contain sufficient evidence of the qualifying relationship or the beneficiary's managerial or executive capacity.

Specifically, the director notes that the only evidence in the file to support the parent/subsidiary relationship was a stock certificate and that there were no tax documents to show that the parent company had paid for the stock. However, the record before the AAO contains IRS Forms 1120, U.S. Corporation Income Tax, for the years 1994, 1996, and 1997. All of the IRS Forms 1120 show that the petitioner had issued common stock valued at \$200,000. Moreover, the INS' own investigation confirmed that the foreign entity had sent \$200,000 to the petitioner and had been issued stock.

The director also states that the job description submitted for the beneficiary did not establish that the beneficiary is employed or had served in a position that was primarily managerial or executive. The director notes that the record does not contain an organizational chart and does not include a description of job duties for all employees under the beneficiary's supervision. However, the record before the AAO contains an organizational chart and a brief description of the beneficiary's subordinates' job duties. Although the AAO observes that there may be some question whether the beneficiary's duties are primarily managerial or executive, the director has not articulated the specific basis for finding the petition deficient. The AAO questions whether the entire record has been reviewed and whether the director has observed the petitioner's use of contracted sales representatives as well as salaried employees.

Additionally, it is noted that the director never requested this information on the first petition (WAC 96 086 50936) prior to denying the petition or before the AAO review on appeal. The petitioner's failure to submit specific evidence that was never requested by the director cannot be used to discredit a petitioner's otherwise consistent claim.

The director's request that the AAO reopen the proceeding will be declined. In order to properly revoke a petition on the basis of an investigative report, the report must have some material bearing on the grounds for

eligibility for the visa classification. The investigative report must establish that the petitioner failed to meet the burden of proof on an essential element that would warrant the denial of the visa petition. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988). In the present matter, the director has presented no reason to reopen the AAO decision. Accordingly the decision will not be disturbed.

ORDER: The director's request is declined.