



U.S. Citizenship
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FILE: WAC 96 170 52844 Office: CALIFORNIA SERVICE CENTER Date: **AUG 22 2005**

IN RE: Petitioner:
Beneficiary:



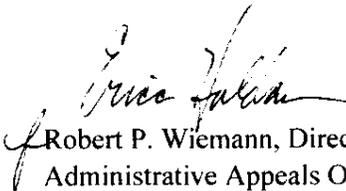
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon subsequent review, the director issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The director's decision to revoke approval of the petition was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a company organized in March 1994 in the State of California. It obtains orders for optical products. It seeks to employ the beneficiary as its vice-president. Accordingly, the petitioner endeavors 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 initially approved the petition filed in May 1996. Upon subsequent review, the director issued a notice of intent to revoke and ultimately revoked approval of the petition on January 30, 2003. The director determined that: (1) the petitioner had not established a qualifying relationship with the beneficiary's foreign employer; or (2) the beneficiary would be employed in a primarily managerial or executive capacity. On appeal, counsel for the petitioner disputed the director's determination. The AAO dismissed the appeal, specifically addressing the evidence submitted by the petitioner. The AAO dismissed counsel's subsequently filed motion determining that the evidence submitted lacked credibility and that counsel had not indicated how the AAO's analysis of the beneficiary's job duties was factually or legally incorrect.

On this second motion, counsel for the petitioner submits a copy of the petitioner's 2001 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return as amended, as well as IRS Form 1120X, Amended U.S. Corporation Income Tax Return, in an effort to clarify past mistakes purportedly made by the petitioner's accountant. The IRS Form 1120X indicates that the petitioner increased the common stock; and thus, the capital had increased proportionately. Counsel asserts that the petitioner provided substantial evidence confirming that the beneficiary qualified as an employment-based manager or executive. Counsel also references a recent Second Circuit matter that prohibits a revocation of an approved petition when the beneficiary is already in the United States.

The regulation at 8 C.F.R. § 103.5(a)(2) states in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

Furthermore, the regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services] policy. A motion to reconsider a decision on

an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On the issue of the petitioner's qualifying relationship with the beneficiary's foreign employer, the AAO observes that the petitioner has not submitted new evidence. Although the petitioner has submitted a copy of an amended tax return, like a delayed birth certificate, an amended tax return prepared four years after the claimed transaction raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). The AAO initially questioned the validity of the stock certificates submitted and whether the beneficiary's foreign employer had purchased its interest in the petitioner. The petitioner's claim that the petitioner's \$739,534.80 debt to the foreign entity was discounted by \$3,123 in exchange for 3,123 shares of its stock has not been substantiated. The inconsistencies in the petitioner's tax returns and other documentation previously noted, cannot be overcome by a late-filed amended tax return. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The petitioner has not submitted new evidence or cited pertinent precedent decisions to establish that the AAO decision was based on an incorrect application of law or policy.

Similarly, on the issue of the beneficiary's executive or managerial capacity, counsel has not submitted new facts supported by affidavits or other documentary evidence and does not cite any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy.

Without addressing the merits of the petitioner's claim, counsel's reference to a recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004, is not relevant to the matter at hand. First, according to the record of proceeding, the petitioner is located in California; thus this matter did not arise in the Second Circuit. *Firstland* was never a binding precedent for this matter. Moreover, even as a merely persuasive precedent, *Firstland* is no longer good law. *See* the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845) signed into law December 17, 2004. *See* Pub. L. No. 108-458, ___ Stat. ___ (2004) and section 5304(d) of Public Law 108-458.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.