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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006
WAC 03 169 53468

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

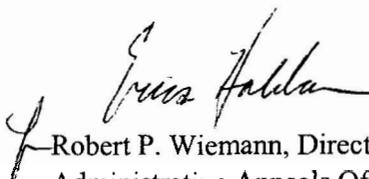
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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, denied the employment-based petition. The petitioner submitted an appeal to the Administrative Appeals Office (AAO) and the AAO affirmed the director's decision on August 3, 2005. The matter is now before the AAO on a motion to reopen and reconsider the previous decision. The motion will be dismissed.

The petitioner avers it is a company organized in the State of California in March 1997 and is a trading and investment company. It seeks to employ the beneficiary as its general manager. 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 denied the petition on October 14, 2004, determining that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer. The AAO summarily dismissed the appeal on August 3, 2005 affirming the director's decision. The AAO acknowledged that the petitioner had submitted a short statement allegedly from the foreign entity indicating that the beneficiary was the sole owner of the foreign entity; the AAO determined however, that an internal statement from the foreign entity is not considered reliable, independent evidence. The AAO concluded that the petitioner had failed to submit clear, independent evidence to show who owns the foreign entity, thus the petitioner had failed to establish a qualifying relationship with the beneficiary's foreign employer.

On motion, counsel for the petitioner asserts that the beneficiary owns a majority interest (65.2 percent) in the foreign entity. Counsel submits copies of three documents with translation that purportedly are stock certificates. The translated documents show that the beneficiary paid: \$30,000 to the foreign entity on December 6, 1990; \$50,000 to the foreign entity on August 10, 1991; and \$70,000 to the foreign entity on May 18, 1992. Counsel also submits a June 6, 1992 translated document that purports to be the minutes of the foreign entity's first shareholder's meeting. The minutes indicate that the beneficiary owns 65.2 percent of the foreign entity and a second individual owns 34.8 percent of the foreign entity. Counsel further submits a translated document purportedly from the Sichuan Bureau of Auditing, dated May 27, 1992 showing that the foreign entity had been capitalized by the beneficiary in the amount of \$150,000 and by a second individual in the amount of \$80,000. Counsel asserts that these documents further corroborate the beneficiary's proprietorship of the foreign entity.

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." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(3) 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 Service 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.

Counsel's assertions are not persuasive. First, counsel does not explain the discrepancy between the petitioner's initial claim that the beneficiary owns 100 percent of the foreign entity and the new claim on appeal that the beneficiary only owns 65.2 percent. Although in both instances the beneficiary would be the majority interest holder in the foreign entity, the inconsistent evidence presented casts doubt on the actual ownership of the foreign entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, counsel does not explain the failure to present this evidence with the petition or at least on appeal when both counsel and the petitioner had notice that the issue of the petitioner's qualifying relationship with the foreign entity was a cause of ineligibility for this visa classification. Documents submitted years after the claimed transactions raise serious questions regarding the truth of the facts asserted.

Second, the documents submitted on motion do not provide any facts that could be considered "new" under 8 CFR 103.5(a)(2). 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. The documentary evidence counsel submits on motion was previously available and could have been discovered or presented in the previous proceeding.

Third, counsel does not submit argument or pertinent precedent decisions establishing that the prior decisions were based on an incorrect application of law or Service policy or that the decision was incorrect based on the evidence of record at the time of the initial decision. Counsel has not submitted sufficient credible evidence or argument sufficient to require the reopening of this matter. The previous decisions of the director and the AAO are affirmed.

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 that: "[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.