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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted]

Office: Texas Service Center

Date: APR 13 2001

IN RE: Petitioner: [Redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

Public Copy

IN BEHALF OF PETITIONER:

[Redacted]

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5). The director determined that the petitioner had failed to demonstrate that she had made a qualifying investment of lawfully obtained funds or that she would create the required number of jobs, either directly or indirectly.

On appeal, counsel asserts the denial is contrary to the law and regulations, that the precedent decisions were contrary to the law and regulations, and that the precedent decisions violated the Administrative Procedures Act and should not have been applied "retroactively." Counsel asserts that he will submit a brief and/or evidence within 30 days.

Counsel dated the appeal November 19, 1998. As of this date, more than two years later, the AAO has received nothing further. Counsel here has not addressed the reasons stated for denial other than to challenge the director's reliance on precedent decisions. Counsel has not provided any additional evidence.

While the appeal generally fails to identify specifically any erroneous conclusion of law or statement of fact as required by 8 C.F.R. 103.3(a)(1)(v), counsel's unsupported assertions regarding the applicability of the precedent decisions will be addressed.

In his decision, the director stated that the petition was reviewed in accordance with the four 1998 precedent decisions issued by the Administrative Appeals Office (AAO).

8 C.F.R. 103.3(c) provides:

Service precedent decisions. In addition to Attorney General and Board decisions referred to in §3.1(g) of this chapter, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. (Emphasis added.)

Despite the clear language of the regulations, counsel argues the precedent decisions constituted new rules which could not be applied retroactively. However, in R.L. Investment Limited Partners, 86 F.Supp.2d 1014, (D. Hawaii 2000) the district court concluded that the AAO precedent decisions did not involve rule making. The District Court for the Western District of Washington

reached a similar conclusion an unreported decision. Golden Rainbow Freedom Fund v. Janet Reno, Case No. C99-0755C (W.D. Washington Sept. 14, 2000). That court specifically noted that there had been no long-standing history or previous binding decisions from which an irrational departure would not be allowed.

Other than challenging the director's use of the precedent decisions, counsel has not alleged any other specific erroneous conclusion of law or fact and has not provided any additional evidence. The appeal must therefore be dismissed.

ORDER: The appeal is dismissed.