

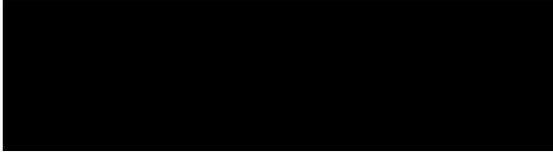


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: WAC-99-098-51912 Office: California Service Center

Date:

IN RE: Petitioner:



APR 23 2001

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

IN BEHALF OF PETITIONER:



identifying 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, California 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 he had invested, or was in the process of investing, the requisite amount of capital in a new commercial enterprise. The director found that the promissory note at issue was not a valid contribution of capital; that the schedule of payments was such that the investment funds would not be fully available to the job-creating enterprise within two years; that certain reserve funds could not be considered capital placed at risk for the purpose of generating a return on the capital placed at risk; that the guaranteed payments to the petitioner would offset the payments to be made by the petitioner and therefore the payments to be made by the petitioner did not constitute an infusion of capital; that the redemption agreement caused the capital not to be at risk for the petitioner; and that the payment of partnership fees and expenses out of the investment amount meant that the full investment amount was not at risk. The director further determined that the petitioner had failed to show the source of his funds and had thus failed to establish that he had acquired legal ownership of the capital through lawful means.

On appeal, counsel expressed disagreement with the director's decision but did not specify which laws, facts, or applications of laws to facts were incorrect other than to assert the director should not have relied on certain precedent decisions. He stated that, within 30 days, he would send a brief or other evidence to the Administrative Appeals Unit ("AAU").

Counsel dated the appeal April 30, 1999. As of this date, nearly two years later, the AAU 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 and to assert that the director incorrectly sets forth certain unspecified facts. 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 assertion 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 following 1998 precedent decisions issued by the Administrative Appeals Office (AAO): Matter of Soffici, I.D. 3359 (Assoc. Comm., Examinations, June 30, 1998), Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), Matter of

Hsiung, I.D. 3361 (Assoc. Comm., Examinations, July 31, 1998, and Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations, July 31, 1998).

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 in 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. As discussed above, the director correctly relied on the precedent decisions. The appeal must therefore be dismissed.

ORDER: The appeal is dismissed.