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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

JUL - 9 2001

File: WAC-00-199-53002 Office: California Service Center Date:

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)

IN BEHALF OF PETITIONER: Self-Represented

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 A. Williams, 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 was statutorily ineligible because he included more than one business on his petition.

On appeal, the petitioner argues that the regulations do not preclude an investor from investing in several new commercial enterprises and that he considers himself a holding company for his several investments.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in *a* new commercial enterprise:

- (i) which the alien has established,
- (ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

(Emphasis added.) On the Form I-526, the petitioner indicated the new commercial enterprise consisted of the following separate businesses:

- 1) Quick-N-E-Z, Inc.
- 2) Super Liquor #2
- 3) Super Liquor #3
- 4) Apartment Complex
- 5) Strip Shopping Mall #1
- 6) Trucking Company
- 7) Rental House
- 8) Strip Shopping Mall #2

The director, without a detailed explanation, statutorily denied the petition, stating a separate petition should have been filed for each business. On appeal, the petitioner concedes that he did not make a qualifying investment into any one of the businesses, asserts the regulations do not

preclude a petitioner from investing in several businesses and argues that he is “like a holding company for each of these enterprises.”

As quoted above, the law requires an investment in “a” commercial enterprise. 8 C.F.R. 204.6(e) states, in pertinent part, that:

Commercial enterprise means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. This definition shall not include a non-commercial activity such as owning and operating a personal residence.

Admittedly, the director’s decision includes little explanation of her conclusion that the petitioner must file separate petitions for each business and no analysis of any of the petitioner’s businesses. The law, however, does support the implication that a petitioner must establish that he created a single commercial enterprise which meets all of the requirements on its own. The petitioner’s argument that he is personally a holding company is not persuasive. Black’s Law Dictionary states:

Company. A corporation – or, less commonly, an association, partnership, or union – that carries on a commercial or industrial enterprise

Holding company. A company formed to control other companies, usu. confining its role to owning stock and supervising management.

Black’s Law Dictionary, 274-275 (7th ed. 1999). The definition of company does not specifically include sole-proprietorships and the definition of a holding company requires a formation process. While the incorporation of a holding company may appear to be a paper requirement with little effect on the actual nature of the businesses, it does not appear to be an onerous requirement and is consistent with the law and regulations. It is noted that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Thus, we would not accept a motion based on the fact that the petitioner incorporated a holding company after the date of filing the petition.

While the director failed to analyze any of the petitioner’s businesses, the following issues are simply noted for the record. First, several of the “businesses” appear to be passive real estate investments, such as the apartment complex, shopping centers, and rental house. Such non employment-generating activities cannot be considered part of a new commercial enterprise

and any money invested in these "businesses" cannot be considered to have been made available for employment creation.¹

In addition, the other businesses appear to be preexisting businesses purchased by the petitioner. As it is the job-creating business that must be examined in determining whether a new commercial enterprise has been created, Matter of Soffici, I.D. 3359, 10 (Assoc. Comm., Examinations, June 30, 1998), the purchase of preexisting stores raises issues regarding whether the petitioner truly established a new commercial enterprise. If, indeed, the petitioner purchased operational businesses, he would have to demonstrate that he either expanded each business by 40 percent, or significantly restructured *each* business so that a new commercial business resulted. See 8 C.F.R. 204.6(h). Moreover, the petitioner would have to demonstrate 10 new employees total. See Matter of Hsiung, I.D. 3361 (Assoc. Comm., Examinations, July 31, 1998). Thus, the petitioner would need to demonstrate the number of employees before and after the purchase.

Further, it is noted that the petitioner financed the purchase of his businesses. Any loans secured by the assets of those businesses and paid off as a normal operating expense cannot be considered part of a qualifying investment. See 8 C.F.R. 204.6(e)(definition of capital).

Finally, the tax returns submitted do not establish how the petitioner could have accumulated the necessary \$500,000, if, indeed, he did contribute \$500,000 of personal funds. Nor does the record contain transactional documents such as wire transfer receipts or cancelled checks demonstrating the path of funds from the petitioner to the individual businesses.

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 met that burden. Accordingly, the petition will be denied.

ORDER: The appeal is dismissed.

¹ While the stores located in a shopping center undoubtedly create employment, those employees would not be direct employees of the shopping center itself. Thus, the ownership of a shopping center is not an employment-generating activity.