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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: [Redacted] Office: Vermont Service Center Date: 14 AUG 2002

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

PENDING COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The approved preference visa petition was revoked by the Director, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal and reaffirmed that decision on motion. The Associate Commissioner reaffirmed its decision on motion on a second motion to reconsider. The matter is now before the Associate Commissioner on a third motion to reconsider. The motion will be granted for the limited purpose of addressing the petitioner's new arguments. The previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

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 approved the petition on June 10, 1998. Upon review of the approved petition, the director determined that the petitioner had failed to demonstrate his eligibility. On July 12, 1999, the director issued a notice of intent to revoke, concluding that the petitioner had not demonstrated that he had established a new commercial enterprise in a targeted employment area, invested the required amount of lawfully obtained capital, or met the employment creation requirement.

On August 6, 1999, the petitioner responded to the director's notice. The director considered the petitioner's response and issued a final notice of revocation. In his final notice, dated October 26, 1999, the director conceded that the petitioner had established a new commercial enterprise in a targeted employment area, but had not overcome the director's other concerns.

On appeal, prior counsel argued that the director did not follow proper procedure in revoking the petition, misstated the facts of the case, and misapplied the law.

On December 8, 2000, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, summarily dismissed the appeal. The record, however, contained a brief submitted by prior counsel in support of the appeal. The case, therefore, was reopened on Service Motion and the appeal was reviewed on its merits. In a decision dated May 2, 2001, the AAO withdrew its previous decision and denied the petition.

In his initial motion, the petitioner asserted that he received poor advice from his prior attorney and that he eventually invested the full \$500,000 which was placed at risk. The petitioner conceded, however, that the new commercial enterprise he established was no longer in operation.

The AAO reaffirmed its May 2, 2001 decision in a decision dated October 22, 2001.

In his second motion, the petitioner reiterated his prior arguments. In addition, he asserted that the AAO used a double standard in considering some evidence of facts which occurred after the petition was filed and discounting other such evidence.

On January 25, 2002, the AAO reaffirmed its October 22, 2001 decision and denied the petition once again.

The petitioner filed the current motion on February 11, 2002. 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. As such, we will only reopen this matter for the limited purpose of addressing the petitioner's new arguments, which are few.

In his current motion, the petitioner asserts that his apartment is near the site where the World Trade Centers stood prior to September 11, 2001, and that he had received a settlement from his insurance company. He does not, however, provide a new address. He does not explain how this event is relevant to his eligibility other than to assert that he is using the settlement money to pay his debts. While we acknowledge the extreme difficulty imposed on those near the September 11<sup>th</sup> disaster, the petitioner has been able to supplement the record since the petition was filed in January 1998. We fail to see the relevance of the tragedy to this petition. In addition, the petitioner argues that the Service's insistence on secured loans fails to take into consideration the way financial markets work. Finally, the petitioner reiterates that his money must have been invested and placed at risk since the business failed, resulting in loss to himself, and continues to assert that had his petition not been revoked, his conditions would have been removed before his business failed.

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).

In our previous decisions, we have discussed the petitioner's failure to establish that he had fully committed the necessary \$500,000 to the business at the time of filing. We have emphasized that the plain language of the pertinent regulation provides that a mere intent to invest at the time of filing is insufficient. The petitioner's argument on motion that the money must have been invested since it was lost is not persuasive that the money subsequently invested in the company was fully committed at the time of filing. Further, regardless of the petitioner's personal opinion that secured loans are contrary to the way the financial market works, the regulations, as quoted in our previous decisions, require that loans be secured by the assets of the petitioner.

Finally, as previously stated in prior decisions, the petitioner must already be eligible at the time of filing and remain eligible until he adjusts status or immigrates. New assertions, which, if true,

might reflect that the petitioner became eligible after the date of filing, are irrelevant because they do not establish his eligibility at the time of filing. New adverse facts, however, are relevant to whether the petitioner remains eligible. The fact that the enterprise upon which this petition was originally based is now defunct clearly precludes the petitioner from establishing that he is seeking to immigrate to the United States to engage in the management of that enterprise, as required by the relevant regulations. The AAO stated in its most recent decision that it is difficult to foresee how a new motion in this case could remedy this flaw. We continue to believe that this issue of regulatory ineligibility cannot be resolved in motions relating to the instant petition.

While noting that it would not make a difference in the final outcome, the AAO also rejected, in our previous decision, the petitioner's contention that his petition was properly approved and, if not for the improper revocation, his business would have lasted long enough for him to remove his conditions. The petitioner reiterates this assertion again in his current motion. While we need not address arguments from previous motions that have already been considered, we repeat once again that the director revoked the instant petition because the petitioner was not eligible at the time of filing. Moreover, the director's decision was based on more than the petitioner's failure to have completed his investment at the time of filing. The petitioner has still not resolved or even addressed the lawful source of the borrowed funds. In all of the AAO's decisions on the merits in this case, we have upheld the director's conclusions on these issues.

On a final note, the law was intended to encourage long term investment by granting conditional, and ultimately permanent, residence to investors willing to invest large sums of money into the economy and create and/or maintain jobs. Granting the investor residency status would then prospectively benefit the United States. The law was not intended to reward investors who are no longer capable of prospectively benefiting the United States for prior failed investments, regardless of whether those failed investments were made in good faith.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

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. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

**ORDER:** The Associate Commissioner's decision of October 22, 2001 is affirmed. The petition is denied.