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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted]

Office: California Service Center

Date: FEB 24 2003

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:

[Redacted]

PUBLIC 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.

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference immigrant visa petition was initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on May 31, 2002.¹ The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration.

The appeal was filed on June 21, 2002, a Friday, 21 days after the decision was rendered. According to the pertinent regulations, the appeal was not timely filed. 8 C.F.R. 205.2(d) states that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The notice of revocation advised the petitioner of the 15-day deadline.

8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2), or the requirements of a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. Review of the record indicates that the appeal meets this requirement.

8 C.F.R. 103.5(a)(3) requires that 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. Such a motion must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Review of the record indicates that the appeal meets this requirement.

According to 8 C.F.R. 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Because, in this case, the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the case must be remanded to the director for a decision pursuant to the regulations governing motions to reopen.

We note, however, that the petitioner's response to the notice of intent to revoke included the 1999 and 2000 tax returns for the new commercial enterprise, HYMY. Both returns reflect that no one individual has a 50 percent or greater interest in HYMY. In addition, the 1999 return reflects no capital stock or paid-in-capital. Rather, it reflects loans from shareholders of \$596,579 at the

¹ On November 2, 2002, the President signed Public Law No. 107-273. Title 1, Sections 11031(b)(1) and 10031(c)(1) provide that the Service shall disregard revocations of Forms I-526 approved between January 1, 1995 and August 31, 1998. We note that the petitioner filed the instant petition on December 10, 1999, and the Service approved the petition December 28, 1999. As such, Public Law 107-273 does not affect this petition and we need not disregard the revocation.

beginning of the year, decreasing to \$499,189 at the end of the year. The 2000 return reflects that paid-in-capital increased from \$0 to \$500,000 and indicates that the loans from shareholders decreased from \$499,189 to \$0 that year. The petitioner also submitted balance sheets for HYMY as of March 31, 2000 and as of September 30, 2001. The March 31, 2000 balance sheet reflects loans from shareholders of \$436,069 and paid-in-capital of \$97,394.95. The September 30, 2001 balance sheet reflects loans from shareholders of only \$15,438 and paid-in-capital of \$500,000.

As this information was not submitted initially, it was not the basis of the director's notice of intent to revoke. In her final decision, the director failed to address whether the 1999 and 2000 tax returns are consistent with an equity investment at the time of filing and whether that investment has been sustained as an equity investment. As such, the director may wish to issue a new notice of intent to revoke including this information in addition to the director's already articulated basis for concluding that the petitioner did not demonstrate the lawful source of his funds.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing. In the event that a new decision is rendered which is adverse to the petitioner, the decision is to be certified to the Administrative Appeals Office for review.