



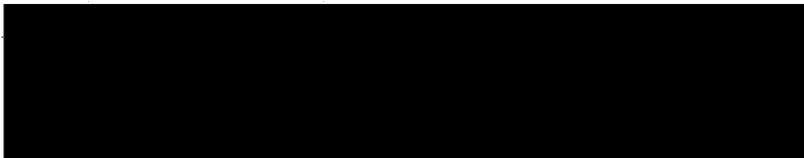
U.S. Department of Justice

Immigration and Naturalization Service

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PUBLIC COPY

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



File: WAC-00-252-53507 Office: California Service Center

Date: FEB 25 2003

IN RE: Petitioner:



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**

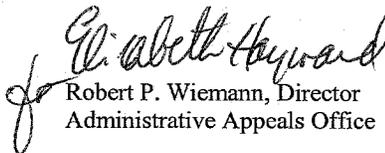
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an alien entrepreneur pursuant to section 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 invested in a commercial enterprise located in a targeted employment area. Thus, by implication, the petitioner could not satisfy the investment requirement by investing the reduced amount of \$500,000, the total investment amount claimed.

On appeal, counsel argues that the State of California designated South El Monte as a targeted employment area and that the commercial enterprise is located on the border of an "exempt" census tract.

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) 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
- (ii) 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).

The petitioner indicates that the petition is based on an investment in a business, Li Ching Hu, Inc. d/b/a Elite Star Corporation, located in a targeted employment area for which the required amount of capital been adjusted downward to \$500,000. Elite Star Corporation is located at 9323 East Rush Street in South El Monte, California.

8 C.F.R. 204.6(e) states, in pertinent part, that:

Targeted employment area means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

8 C.F.R. 204.6(j)(6) states that:

If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. 204.6(i).

A petitioner must demonstrate that the location of the business was in a targeted employment area at the time of filing. *Matter of Soffici*, 22 I&N Dec. 158, 159-160 (Comm. 1998), *cited with approval in Spencer Enterprises, Inc. v. United States*, CIV-F-99-6117, 23-24, (E.D. Calif. 2001).

Initially, the petitioner submitted a publication from California's Employment Development Department (EDD). This publication, relying on data from 1998, designates South El Monte as a qualifying city within Los Angeles County. The director issued two requests for additional documentation, neither of which dealt with this issue. On May 20, 2002, the director issued a notice of intent to deny, asserting that 9323 East Rush Street is located on U.S. census tract 4335.01 and that this tract "is not listed on the exemption list."

In response, counsel asserted that 9323 East Rush Street is located on the border of an exempt tract, 4337. The petitioner submitted evidence that the buildings across the street, 9322 and 9324, are both located on tract 4337. In his final decision, the director acknowledges counsel's claim that 9323 is on the border of tract 4337 but concludes, "the record indicates that the commercial enterprise is located on a non-exempt census tract, 4335.01 according to the 2000 U.S. census tracts." As tract 4335.01 is not listed as an "exempt" tract, the director concluded that the petitioner had not invested in a targeted employment area. As the petitioner only claimed to have invested \$500,000, the minimum amount for a targeted employment area, the director denied the petition.

On appeal, counsel reiterates his arguments in response to the notice of intent to deny and asserts that the director failed to consider those arguments. Counsel also notes that the city of South El Monte was a targeted employment area “at the relevant times.”

While counsel has not challenged the director’s conclusion that 9323 is located on tract 4335.01 other than to argue it is on the border of tract 4337, the record contains no evidence to support the director’s conclusion. The director does not explain where he obtained this information and we are unable to locate any documentation in the file that references the census tract for 9323 East Rush Street.¹ For this reason alone, we cannot uphold the director’s decision.

Moreover, as stated above, the EDD, the State agency authorized to make such determinations pursuant to 8 C.F.R. 204.6(j)(6)(ii)(B), designated South El Monte as a targeted employment area using 1998 data. While not in the record, we have obtained the 2000 designations relying on 1999 data. These designations also include South El Monte. Finally, according to www.calmis.ca.gov/FILE/LFHIST/00AASUB.TXT, South El Monte had an unemployment rate of 8.5 percent in 2000. That rate is more than 150 percent of the national rate in 2000, which was four percent.

The list of tracts in the record is titled “Census tracts that have an unemployment rate equal to or greater than 5.95% for 2000 (County did not qualify.)” The record contains no evidence indicating who issued this list or the source of the data. As the State of California authorized the EDD to designate targeted employment areas, their designations of geographic zones are decisive. Where EDD designates a geographic area within a metropolitan area, such as the entire city of South El Monte, the director may not look to smaller units within that geographic area, such as census tracts. The record clearly reflects that, regardless of census tract, 9323 East Rush Street is located within South El Monte. The city of South El Monte was designated by the EDD as a targeted employment area in 1999 and 2000 using data from 1998 and 1999. Thus South El Monte was a targeted employment area at the time of the petitioner’s alleged investment. The 2000 data reflect that South El Monte continued to suffer an unemployment rate greater than 150 percent of the national rate in 2000. Thus, the director erred in rejecting these designations in favor of evaluating the employment data for a specific census tract.

In light of the above, we cannot uphold the sole basis of the director’s decision. Therefore, this matter will be remanded for consideration of the remaining eligibility requirements. For example, the director shall consider whether the record adequately documents that the petitioner has placed the full \$500,000 at risk. The tax returns suggest that the new commercial enterprise is an operational business capitalized with \$500,000. Bank statements and wire transfer receipts verify the petitioner’s transfer of \$500,000 into the commercial enterprise’s account. The petitioner, however, also transferred \$120,740 on January 19, 1999 and \$82,500.20 on January 27, 1999 from the new commercial enterprise to an unidentified foreign account. The record

¹ While the U.S. Census Bureau’s website, tier2.census.gov/cgi-win/ctsl/ctslzip.exe, was unable to produce a result for 9323 East Rush Street, that site indicates that 9323 Rush Street in South El Monte is located on tract 4335, an exempt tract according the list of exempt tracts in the file.

contains no evidence that these funds went to satisfy a legitimate business expense. We note that the tax return attachments reflect that no equipment was purchased for the business until April 1999. We further note that the petitioner had only transferred \$200,094 to the new commercial enterprise as of January 19, 1999 and transferred the remaining \$299,982 after that date. Any money transferred out of the business to the petitioner and back to the business cannot be counted twice.

Should the director determine that the petitioner contributed the full \$500,000, the director must still determine whether the petitioner has established legitimate capital business expenses close to \$500,000. We note that the record includes no lease or receipts/invoices for the purchase of equipment. Moreover, the unaudited income statements reflect only \$141,650 in expenses between October 1998, when the corporation was founded, and October 31, 1999. The detail of assets included with the tax return reflects only \$140,453 in equipment. While some of the initial cost of sales can be considered capital expenditures, once the company is operational, the purchase of raw materials is a normal operating expense funded by the proceeds of prior sales. Finally, the director must determine whether the petitioner's annual gross income ranging from approximately \$70,000 to \$90,000 during 1995 through 1999 can account for the accumulation of \$500,000.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.