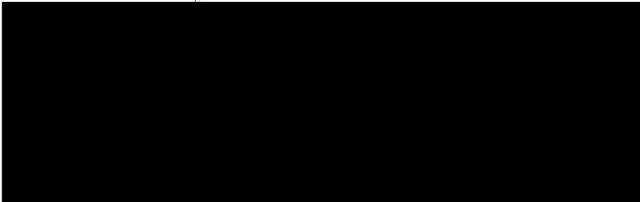


B7

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



File: WAC-01-019-51865

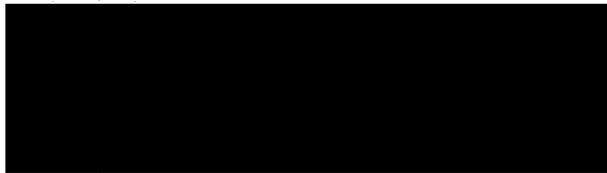
Office: California Service Center

Date: **MAR 10 2003**

IN RE: Petitioner: 

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

ON BEHALF OF PETITIONER:



PUBLIC COPY

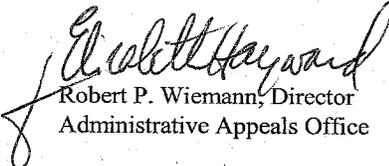
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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 immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The decisions of the AAO and 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 an investment in a targeted employment area. Thus, the petitioner's claimed investment of \$500,000 would be insufficient.

On appeal, counsel argues that the petitioner invested in the City of Los Angeles, a designated targeted employment area.

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, Heng Zhu Limited Partnership, located in a targeted employment area for which the required amount of capital been adjusted downward to \$500,000. The employment generating entity, a Shiatsu Spa, would be located at 13535 Ventura Blvd., Sherman Oaks, 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 1999, designates the City of Los Angeles as a qualifying city within Los Angeles County. The director issued a notice of intent to deny, asserting that a call was made to the California Trade and Commerce Agency, Office of Foreign Investment, who advised that Sherman Oaks is not within Los Angeles City. As the EDD publication did not list Sherman Oaks as a qualifying city, the director concluded that the petitioner had not established that he would generate any employment in a targeted employment area.

In response, counsel asserted that the California Trade and Commerce Agency has clarified the location of Sherman Oaks. The petitioner submitted a letter from [REDACTED] director of the California Trade and Commerce Agency, advising that Sherman Oaks is within the City of

Los Angeles. [REDACTED] advises that any additional information be sought from Councilman Mike Feur of the Fifth District of the City of Los Angeles. The petitioner also provided a letter from Councilman Feur's office asserting that 13535 Ventura Boulevard is located in Council District Five for the City of Los Angeles. Finally, the petitioner submitted information from the Sherman Oaks Chamber of Commerce reflecting that "Sherman Oaks is a community encompassing approximately 10 square miles, all within the City of Los Angeles."

In her final decision, the director stated that the issue was not whether Sherman Oaks was within the City of Los Angeles, but whether the business was within a targeted employment area. Noting that the entire county of Los Angeles was not designated as a targeted employment area, the director claimed to have determined the census tract for the location of the business from one website¹ and then determined that the relevant census tract did not have a sufficiently high unemployment rate according to another website.²

On appeal, counsel asserted that the director used the incorrect standard and indicated that he would submit a brief in 30 days. On September 11, 2002, the AAO determined that counsel had not submitted a brief and summarily dismissed the appeal. On motion, counsel submits evidence that a brief was, in fact, timely submitted. Counsel asserts that since the entire city of Los Angeles is designated as a targeted employment area, the director erred by looking at the individual census tract.

Most significantly, the petitioner submitted a new letter from Jeffrey Matsui. Mr. Matsui asserts that the EDD designates certain geo-political subdivisions as targeted employment areas based on unemployment rates for the entire subdivision. [REDACTED] expresses his understanding that not every census tract within a designated geo-political subdivision need have a sufficiently high unemployment rate. While Mr. Matsui's interpretation of our regulations is not binding on us, his explanation of how the State designates targeted employment areas is significant. Moreover, we concur with his analysis.

The record clearly reflects that, regardless of census tract, 13535 Ventura Boulevard is located within the City of Los Angeles. We do not agree with the director that the location of the business within the City of Los Angeles is not relevant. The City of Los Angeles was designated by the EDD as a targeted employment area in 2000 using data from 1999. The 2000 data obtained by this office reflects that the City of Los Angeles 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

¹ [Http://tier2.census.gov/ctsl/ctsl.htm](http://tier2.census.gov/ctsl/ctsl.htm). This website is referenced on the EDD materials.

² [Http://commerce.ca.gov/international/offi/visa/census](http://commerce.ca.gov/international/offi/visa/census). This website is also referenced on the EDD materials.

has placed the full \$500,000 at risk. While the petitioner submitted a business plan and a lease, the director did not discuss whether these activities are sufficient under the analysis set forth in *Matter of Ho*, 22 I&N Dec. 206 (Comm. 1998). We note that the record does not contain evidence of contracts for the renovations alleged to require \$300,000. In addition, we note that while the Certificate of Limited Partnership identifies Pacific Rim Group Investments, Ltd. as the general partner of Heng Zhu Limited Partnership, the partnership agreement itself identifies the general partner as Shiatsu Spas of California, Inc. Further, the director should determine whether the documentation submitted as evidence tracing the path of the funds sufficiently reflects the source of each documented deposit. Finally, we note that while the petitioner transferred \$500,000 to counsel, only \$400,000 was subsequently transferred to the limited partnership's money market and checking accounts.

Therefore, this matter will be remanded for consideration of the above-mentioned issues. 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.

RECEIVED
MAY 12 2004