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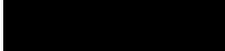
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DEC 30 2004



FILE: WAC 00 252 53507 Office: CALIFORNIA SERVICE CENTER Date:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

 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) remanded the case back to the director on appeal in a decision dated February 25, 2003. On June 2, 2003, the director issued a notice of intent to deny and on August 6, 2003, the director denied the petition a final time, certifying that decision to the AAO. The AAO affirmed the director's decision on certification. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be withdrawn and the petition will be approved.

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).

In his final decision, the director determined that the petitioner had failed to demonstrate the lawful source of her invested funds. The AAO affirmed the director's decision, concluding that the petitioner had not demonstrated sufficient income to account for the accumulation of \$500,000.

On appeal, counsel asserts that the petitioner had access to the full gross income earned by her and her spouse. The petitioner, through counsel, submits her joint tax return for 1993 and an employment letter from her former employer.

Section 203(b)(5)(A) of the Act, as amended by the 21<sup>st</sup> Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), 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 record indicates that the petition is based on an investment in a business, Elite Star Corporation, located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is \$500,000.

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

- (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
  - (i) Foreign business registration records;
  - (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

- (iii) Evidence identifying any other source(s) of capital; or
- (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho*, 22 I&N Dec. 206, 210-211 (Comm. 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998). Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. *Id.* Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972); *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). These “hypertechnical” requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001)(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

The petitioner previously submitted the joint tax returns filed by her and her spouse in 1994 through 1999 and evidence of savings accounts with balances in the aggregate of more than \$500,000 prior to the petitioner’s investment. The AAO questioned whether the petitioner’s joint income could account for the accumulation of \$500,000. On appeal, the petitioner submitted her 1993 tax returns reflecting joint income comparable to their income in 1994 through 2000. The petitioner also submitted an employment letter confirming her employment for an insurance company from 1973 to 1999 and subsequent retirement income. While the petitioner has not demonstrated an unusually large income, she has demonstrated a pattern of steady income and 26 years of professional employment that is not inconsistent with the accumulation of \$500,000 at the time of retirement.

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 sustained that burden. Accordingly, the previous decision of the AAO will be withdrawn, and the petition will be approved.

**ORDER:** The AAO’s decision of January 16, 2004 is withdrawn. The petition is approved.