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U.S. Citizenship
and Immigration
Services

B7

FILE:

WAC 97 009 52674

Date:

SEP 08 2005

Dear Mr. [REDACTED]

On October 11, 1996, you filed a petition seeking to classify yourself 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).

You signed Form I-526, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct."

On February 26, 1997, the Director, California Service Center, approved the petition. On May 28, 2004, the director served you with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.

During the adjudication of your appeal, information has come to light that seriously compromises the credibility of your claims. Based in part upon this information, the AAO intends to dismiss your appeal. Pursuant to Citizenship and Immigration Services regulations at 8 C.F.R. § 103.2(b)(16)(i), we hereby notify you of this derogatory information and provide you with an opportunity to respond before we render our final decision.

Included as evidence of the lawful source of the funds purportedly invested in the new commercial enterprise, you submitted a "Certificate of Employment" dated February 15, 1994. That certificate purports to confirm your employment at [REDACTED] as a senior sales manager since 1985." The certificate purports to affirm your responsibilities as being "in charge of the marketing promotion and development for both domestic and international export markets" and "the setup of strategy, budget and policy making for the company's marketing promotion, and supervision of a sales team on the daily basis."

Previously, it appears that Admiral Financial Services filed a Form I-140 petition seeking to classify you as a manager/executive of a multinational company pursuant to Section 203(b)(1)(C) of the Act. On October 19, 1995, in connection with the adjudication of your adjustment application based on that Form I-140 petition, the Director, Los Angeles District, requested an investigation of your employment in Taiwan. The resulting report by the Travel Services Section of the American Institute in Taiwan characterizes as "falsified" the employment certificate submitted in support of the Form I-140, which included the statement that the you had "been serving as

senior sales manager since 1985 at our company in charge of the marketing promotion and development for both domestic and international export markets . . . supervision of a sales team on the daily basis.”

Specifically, the investigative report provides the following information regarding yourself, the beneficiary in that matter:

On 6/9/95, [the beneficiary's] brother – [redacted] brought us Taiwan company's documents showing that it's in fact divided into 2 companies [redacted] located at the same address but to escape paying taxes to the local government. These 2 family business[es] are set up for 20 years by [the petitioner's] father, capitalized NT\$8 Million each; 2 companies employing [a] total of 12 staff and distributing PVC plastic cloths to local markets 60-70% and export 30-40% to China and S.E. Asia through unrelated trading companies.

[The beneficiary's] labor insurance card shows that [the petitioner] worked in the family business [redacted] from 9/85 to 12/86 only, as a salesman. He changed work to Taikex Co (of which [the beneficiary's] father owned 2% shares) – importer of Taylor ice cream machine and sells domestically [sic] only, from 1/6/87 to 3/30/90; first as a salesman, 2 years later, [the beneficiary] was promoted to be sales supervisor overseeing 2-3 salesmen.

After that, [the beneficiary] worked at U-Wood Int'l Inc. from 9/14/90 to 12/28/90 unrelated to the family business. Then [the petitioner] went to the U.S. on 2/91 on F-1 visa and stayed there until now. That's why [redacted] could not find any salary record of [the beneficiary] since 1/6/87 until now.

* * *

[The beneficiary] was graduated from a high school in Taiwan, when he joined the family business – [redacted] from 9/85 to 12/86. [He] worked as a salesman to learn the business with [his] father's assistance. At that time, [redacted] added that his father had hire and fire authority, 3 salesmen under [the petitioner] were quite senior than [the beneficiary] by 10 years, so all worked independently without [the petitioner's] supervision [sic].

This report contradicts the claims made in the certificate of employment submitted in support of the instant petition.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

In addition to its relevance to whether you have established the lawful source of his funds, your apparent submission of a falsified report relates to the impact of the director's decision on the your application to adjust status, Form I-485. Section 11032 of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002) [hereinafter the Public Law], provides:

(b) Eligible Aliens Described.—An alien is an eligible alien described in this subsection if the alien—

(1) filed, under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) (or any predecessor provision), a petition to accord the alien a status under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) that was approved by the Attorney General after January 1, 1995, and before August 31, 1998;

(2) pursuant to such approval, timely filed before the date of the enactment of this Act an application for adjustment of status under section 245 of such Act (8 U.S.C. 1255) or an application for an immigrant visa under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)); and

(3) is not inadmissible or deportable on any ground.

You filed the instant Form I-526 petition on October 11, 1996. The director approved the petition on February 28, 1997. On May 7, 1997, you filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with receipt number WAC-97-149-51104. Thus, you meet subparagraphs (b)(1) and (2) of Section 11032 of the Public Law quoted above. Were you an eligible alien, we acknowledge that paragraph (c)(1) of Section 11032 of the Public Law requires that the director disregard any revocation based solely on the sufficiency of the investment. Section 212(a)(6)(C) of the Act, however, provides:

(i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Any finding that you are inadmissible would result in a finding that you are not an eligible alien as defined in Section 11032(b) of the Public Law. Thus, the director would not need to disregard any revocation of the Form I-526 before us.

The regulation at 8 C.F.R. § 103.2(b)(16)(i) does not specify the amount of time afforded to an applicant or petitioner to respond to derogatory evidence. We consider thirty (30) days to be ample time for this purpose. Therefore, you are hereby afforded 30 days from the date of this letter in which to respond to this notice. If you choose to respond, please submit your response to the address shown on the first page of this letter. Also, please reference your A-number [REDACTED] your response.

Maureen

Robert P. Wiemann, Director
Administrative Appeals Office

cc: [REDACTED]