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U.S. Citizenship
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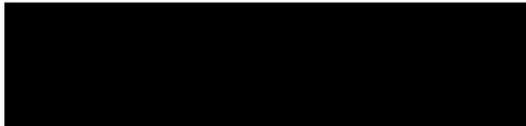
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Office: CALIFORNIA SERVICE CENTER

Date: DEC 18 2006

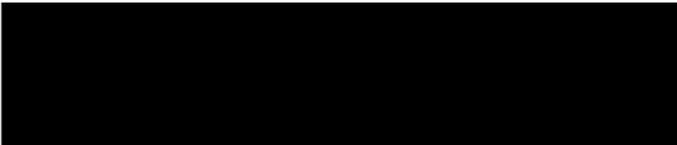
IN RE:

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.

Σ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the preference visa petition. On May 28, 2004, the director served the petitioner with notice of intent to revoke the approval of the petition. In a Notice of Revocation, the director ultimately revoked the approval of the Immigrant Petition by Alien Entrepreneur (Form I-526). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

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 a qualifying equity investment. On appeal, counsel asserts that a 2002 law disfavors revocation of the petition, approved prior to the August 1998 precedent decisions in this classification, and responds to some of the director’s conclusions.

On September 8, 2005, this office issued a notice of intent to dismiss the appeal, advising the petitioner of derogatory evidence in an investigative report, and providing the petitioner with a nearly verbatim account of the report. On September 27, 2005, counsel indicated that he had made a Freedom of Information Act (FOIA) request for a copy of the record and requested an extension of time to respond. On July 7, 2006, Citizenship and Immigration Services’ (CIS) FOIA/PA Office complied with counsel’s request. There is no statutory or regulatory provision that requires the AAO to hold a Form I-526 appeal in abeyance while a FOIA request is pending. Nevertheless, the AAO refrained from adjudicating the appeal in this matter until FOIA responded to the petitioner’s request. As of this date, over one year after receiving a verbatim account of the derogatory information in the investigative report and nearly five months after receiving the report itself as part of the entire record of proceeding, neither the petitioner nor counsel has submitted anything further. The AAO concludes that the Public Law discussed below does not bar the revocation of the approval of the petition, that the petitioner has

not overcome the director's basis for revoking the petition and that the petitioner has made a material misrepresentation.

Section 203(b)(5)(A) of the Act, as in effect when the petition was filed, provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) which the alien has established,
- (ii) 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
- (iii) 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 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002) [hereinafter the Public Law] amended section 203(b)(5)(A) of the Act by removing subparagraph (i) and redesignating subparagraphs (ii) and (iii) as subparagraphs (i) and (ii) respectively. Section 11036(a)(1)(A) of the Public Law. The amendments took effect on November 2, 2002 and "shall apply" to petitions pending on or after that date. Section 11036(c) of the Public Law.

Section 11032 of 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.

Section 11032 of the Public Law continues:

(c) Treatment of Certain Applications.—

(1) Revocation of approval of petitions.--If the Attorney General revoked the approval of a petition described in subsection (b)(1), such revocation shall be disregarded for purposes of this section if it was based on a determination that the alien failed to satisfy section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)).

Section 11032 of the Public Law defines eligible aliens as those for whom the director had approved a given petition between January 1, 1995 and August 31, 1998 and subsequently revoked the approval of that petition. Thus, the typical eligible alien would not have a petition that was “pending” as of November 2, 2002 or thereafter. As the amendments set forth in section 11036 of the Public Law only apply to petitions that were pending as of November 2, 2002, we interpret section 11032(c) of the Public Law as referring to section 203(b)(5)(A)(ii) of the Act *as in effect when the eligible alien filed his petition*. As quoted above, that subparagraph relates to an investment of the required amount. Thus, where the petitioner is an eligible alien, the revocation of the approval of his petition based on the lack of a qualifying investment implicates section 11032(c) of the Public Law. We presume Congress intended for CIS to apply the same test for all potential eligible aliens, regardless of whether their petitions may technically be deemed pending on or after November 2, 2002.

The director’s revocation in this matter was based solely on a determination that the petitioner failed to satisfy section 203(b)(5)(A)(ii) of the Act as in effect when the petition was filed. While subparagraph (c)(1) of section 11032 of the Public Law quoted above references revocations in the past tense, for the reasons discussed above, the petitioner is an eligible alien under this law, which requires that CIS disregard revocations of Form I-526 petitions for eligible aliens when based on a failure to satisfy section 203(b)(5)(A)(ii) of the Act.¹ Thus, assuming the petitioner were an eligible alien as defined above, any revocation would have to be disregarded.²

The petitioner filed the instant petition on October 11, 1996. The director approved the petition on February 28, 1997. On May 7, 1997, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with receipt number WAC-97-149-51104. Thus, the petitioner meets subparagraphs (b)(1) and (2) of Section 11032 of the Public Law quoted above.

¹ We read this provision to apply to revocations based on this issue and this issue alone. It would appear that CIS need not disregard revocations that include other issues, such as employment creation.

² The implications of rendering a decision that must be disregarded will be discussed at the end of this decision.

Section 212(a)(6)(C) of the Act 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.

As discussed below, this decision constitutes a formal finding of fraud and inadmissibility. Thus, the petitioner is not an eligible alien as described in Section 11032 of the Public Law as he does not meet subparagraph (b)(3) of Section 11032 of the Public Law.

In light of the above, the director is not precluded from revoking approval of the instant petition because the alien is inadmissible and therefore not an eligible alien under subparagraph (b)(3) of Section 11032 of the Public Law. Thus, we will adjudicate the appeal on its merits.

The record indicates that the petition is based on an investment in a business, [REDACTED] doing business as [REDACTED] not 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 \$1,000,000.

INVESTMENT OF CAPITAL

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

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.

* * *

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

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

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

As stated above, the minimum investment amount in this matter is \$1,000,000. While the alien need only be actively in the process of investing, the alien must show an actual commitment of the full amount. On the Form I-526, Part 3, the petitioner claimed to have invested \$124,662 on January 28, 1993 and a total of \$611,664. On Part 4 of the petition, the petitioner indicated that the business' assets included \$31,794.59 in cash and \$284,308.98 in assets purchased for the business for a total of \$316,103.57. The petitioner claimed to own 50 percent of the new commercial enterprise. In his cover letter, the petitioner indicated that he had invested \$611,664 and had "the financial capacity to continue the investment amount exceeding one million U.S. dollars in the nearest future whenever

the need arises at the corporation.” In a separate statement, the petitioner broke down his investment as follows:

- | | |
|--|-----------|
| 1) Purchase for company shares & capital infusions: | \$365,702 |
| 2) Purchase for office building.
(50 percent of equity in \$192,800.) | \$96,400 |
| 3) Remodeling for office space, display room and repair shop. | \$124,662 |
| 4) Purchase and installations for office computer
and phone system. | \$24,900 |

The petitioner submitted copies of the fronts of the following checks drawn on his personal account, with no evidence of cancellation, as evidence of the \$365,702 investment:

- | | | |
|-------|-----------------|--|
| Check | for \$20,000 to | on June 22, 1994, |
| Check | for \$64,267 to | the other shareholder, on August 31, 1994, |
| Check | for \$50,000 to | on June 15, 1994, |
| Check | for \$50,000 to | on April 19, 1994, |
| Check | for \$50,000 to | April 30, 1994, |
| Check | for \$1,707 to | on February 17, 1995, and |
| Check | for \$5,000 to | on August 17 of an unspecified year. |

The petitioner submitted checks for \$100,000 and \$24,727 to [redacted] and [redacted] from [redacted]. According to the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, Mr. [redacted] is the petitioner's father. While the petitioner submitted the Buyer's Final Settlement Statement for the purchase of [redacted] dated September 9, 1994, he did not submit the transactional evidence for the purchase. While the petitioner claims to have contributed 50 percent of the sales price, we note that he was only a 33.3 percent owner in 1994. Finally, the petitioner submits the copies of the fronts of checks issued on his account, with no evidence of cancellation, as evidence of his contributions for renovations, the office computer and phone system.

The petitioner submitted compiled financial statements and tax returns. [redacted] 1994 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, Schedule E, reflects that the petitioner owned 33.3 percent of the company at that time. Schedule L reflects that common stock in the company increased from \$0 to \$27,000 and that loans from stockholders increased from \$18,379 to \$931,379. The 1995 return reflects that the petitioner's share of the common stock increased to 50 percent, that the common stock remained at \$27,000 and that stockholder loans decreased to \$511,861. This information is consistent with the compiled financial statements for 1995. Finally, the petitioner submitted stock certificate number 4 for Pan World issued to him for 165,000 shares.

As evidence of his ability to pay the remainder of the \$1,000,000 required investment, the petitioner submits a personal statement of his net worth supported with documentation of his assets in Taiwan and the United States.

On December 24, 1996, the director requested additional evidence. In response, prior counsel asserted that the petitioner had completed an investment of \$1,314,183.70 as of December 31, 1996. The petitioner submitted [REDACTED] bank statements for 1996 and 1997. While these statements list multiple credits, they do not reflect the source of this income. We note that a company obtains funds from numerous sources in the course of business. Moreover, these statements cannot establish any investments prior to 1996. The petitioner also submitted a promissory note by [REDACTED] for \$700,000 dated February 8, 1996. The note, while secured by the petitioner's property, evidences a revolving line of credit. The petitioner submitted no evidence that any of these funds had been utilized.

On February 27, 1997, the director approved the petition. On May 28, 2004, the director issued a notice of intent to revoke the approval of the petition. The director noted that the petitioner had only claimed to have invested \$611,664 as of the date of filing and that the evidence did not even establish an investment of that amount. In response, counsel asserted that the director erred in failing to consider the \$700,000 line of credit in addition to the \$611,664 as the line of credit is secured by the petitioner's assets. Counsel failed to address any of the director's concerns regarding the lack of evidence of the claimed \$611,664 investment.

The petitioner submitted a guaranty for the \$700,000 line of credit signed only by the petitioner. The front page of the document is undated and does not list a loan number. The petitioner also submitted [REDACTED] tax returns for 1997 through 2003. The total common stock remains at \$27,000 in all years. The loans from stockholders fluctuate between \$0 and \$580,961. Beginning in 1998, the petitioner is listed as the sole stockholder.

The director concluded that the petitioner had not responded to the concerns provided in the notice of intent to revoke regarding the lack of evidence of the claimed \$611,664 investment. In addition, the director reiterated that the record lacked evidence that any of the funds from the \$700,000 credit line were disbursed. Finally, the director found that the tax returns did not support the petitioner's claim to have made an equity investment of over \$1,000,000. Specifically, the director noted that the tax returns never reflect more than \$27,000 in common stock and that the loans to the company are not qualifying investments.

On appeal, counsel asserts that the petitioner submitted a subordination agreement evidencing a \$563,000 disbursement on February 8, 1996. This evidence is not part of the record. While the 1996 tax return was not submitted, none of the returns after that year reflect a \$563,000 loan. While the petitioner guarantied the loan, [REDACTED] is the debtor. Thus, it can be expected that any disbursements would be reflected on [REDACTED] tax returns. Moreover, the credit line was opened after the date of filing. The record contains no evidence that the petitioner had fully committed these

funds as of the date of filing, such as by issuing a secured promissory note to Pan World. As stated above, the regulation at 8 C.F.R. § 204.6(j)(2) requires that the petitioner demonstrate that the funds are fully committed as of the date of filing. *See also* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Once again, counsel does not address the director's concerns regarding the lack of evidence of the originally claimed \$611,664, characterizing the director's entire concern regarding these funds as to their lawful source. It remains, without copies of canceled checks or 1994 and 1995 bank statements confirming the issuance of the checks on the petitioner's account, we cannot conclude that the petitioner contributed those funds. Moreover, the petitioner has not documented that the funds from his father represents his personal investment of his own personal funds. Further, the record lacks evidence that the petitioner contributed half of the cost for the building in cash as claimed. As noted above, the petitioner was not a 50 percent owner at the time. Finally, the petitioner has not addressed the indication of only \$27,000 in common stock on all of the tax returns. We concur with the director that the definition of invest at 8 C.F.R. § 204.6(e) precludes the inclusion of loans to the commercial enterprise as part of a qualifying investment. Thus, we cannot consider the large stockholder loans listed on the tax returns.

In light of the above, the petitioner has not established a qualifying investment.

SOURCE OF FUNDS

The regulation at 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). 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).

Initially, the petitioner submitted documentation regarding a foreign company and his employment with that company as evidence of his lawful source of funds. The petitioner did not address this issue further in the response to the director’s 1996 request for additional evidence. In his notice of intent to revoke, the director concluded the record lacked evidence of the lawful source of the allegedly invested funds. In response, counsel relies on the initial evidence purporting to document the petitioner’s role with a foreign company. The director did not specifically focus on this issue in the final decision, but counsel continues to address it on appeal, asserting that CIS cannot require positive evidence regarding this issue in revocation proceedings. Accordingly, the AAO has addressed the evidence of lawful source of funds in the September 8, 2005 notice and in this decision.

Matter of Estime provides that a notice of intention to revoke approval of a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition *based upon the petitioner’s failure to meet his burden of proof*. *Matter of Estime*, 19 I&N at 451. Thus, the petitioner’s failure to meet his burden of proof in establishing the lawful source of his funds is a valid issue in revocation proceedings.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Moreover, the petitioner has been placed on notice of the deficiencies regarding this issue, both in the director’s notice of intent to revoke and in this office’s notice of intent to dismiss the appeal.

Included as evidence of the lawful source of the funds purportedly invested in the new commercial enterprise, the petitioner submitted a "Certificate of Employment" dated February 15, 1994. That certificate purports to confirm his employment at [REDACTED] "as a senior sales manager since 1985." The certificate purports to affirm his 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 the petitioner 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 the petitioner's adjustment application based on that Form I-140 petition, the Director, Los Angeles District, requested an investigation of the petitioner's 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 petitioner 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 the petitioner:

On 6/9/95, [the petitioner's] brother – [REDACTED] brought us Taiwan company's documents showing that it's in fact divided into 2 companies – [REDACTED] and [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 petitioner'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 [REDACTED] (of which [the petitioner'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 petitioner] was promoted to be sales supervisor overseeing 2-3 salesmen.

After that, [the petitioner] worked at [REDACTED] 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 petitioner] since 1/6/87 until now.

[The petitioner] 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 petitioner] by 10 years, so all worked independently without [the petitioner's] suprevison [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).

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

Finding of Misrepresentation and Inadmissibility

On September 8, 2005, this office advised the petitioner and counsel of the above information in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i) and afforded them 30 days to respond. The amount of time afforded to respond to such a notice need only be reasonable and need not necessarily exceed 15 days. *Matter of Obaigbena*, 19 I&N Dec. 533, 536 (BIA 1988). On September 27, 2005, counsel requested additional time to respond while he obtained a copy of the record. As stated above, the FOIA/PA Office complied with counsel's request on July 7, 2006. As of this date, more than five months later, this office has received nothing further. As such, the petitioner has failed to rebut the above derogatory information.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (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.

The falsified letter constitutes a material misrepresentation. Under BIA precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter*

of *S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961). As previously discussed, any alien who seeks classification under section 203(b)(5) of the Act and the corresponding regulations is obligated to demonstrate the source of the invested funds. *See* 8 C.F.R. § 204.6(j)(3). In the present matter, the petitioner claimed the funds were derived from his income as a “senior sales manager” from 1985 to at least 1994, at the [REDACTED]. The petitioner submitted the February 15, 1994 “Certificate of Employment” in support of this claim. As previously discussed, this claim is directly contradicted by an overseas investigation conducted by the American Institute of Taiwan that concluded that the “Certificate of Employment” letter was falsified and that the petitioner did not work at the [REDACTED].

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

By filing the instant petition and submitting a fraudulent certificate of employment as evidence of his lawful source of funds, the petitioner has sought to procure a benefit provided under the Act using fraudulent documents and through misrepresentation of material facts. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the employment certificate was a falsification, we affirm our finding of fraud. In addition, because the petitioner is claiming eligibility as an alien described in Section 11032 of the Public Law, the AAO is required to determine whether he is admissible as an immigrant in accordance with Section 11032(b)(3) of the Public Law. Because of his attempt to procure a benefit under the Act through fraud and material misrepresentation, we find that the petitioner is inadmissible under section 212(a)(6)(C) of the Act.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous, material errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the petitioner's eligibility is not credible. Accordingly, the petitioner has not established the lawful source of funds for his investment, or his eligibility for the requested immigrant visa classification.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, 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 petition. *See Matter of Ho*, 19 I&N Dec. at 591-92.

By filing the instant petition and submitting the false certification of employment, the petitioner has sought to procure a benefit provided under the Act using a fraudulent document and through

misrepresentation of material facts. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the employment certification was a falsification, we make a finding of fraud, material misrepresentation, and inadmissibility. This finding of fraud, material misrepresentation and inadmissibility shall be considered in any future proceeding where admissibility is an issue.

Implications of Revoking the Approval of the Form I-526

As stated above, the petitioner is inadmissible and, thus, is not an eligible alien. It bears discussion, however, whether the director can revoke the approval of an eligible alien's Form I-526 petition and, if so, what purpose it might serve.

We do not find it inconsistent to uphold the director's ability to revoke approval of the petition even if subject to being disregarded. Whether or not the petition has been revoked is still relevant to the adjudication of the petitioner's eventual Form I-829 petition to remove conditions on his permanent residence.

Specifically, sections 11032(a) and 11032(e) of the Public Law provide that eligible aliens must still complete a conditional permanent residence period and petition for removal of those conditions. *Chang v. U.S.*, 327 F.3d 911, 926-927 (9th Cir. 2003), holds that CIS cannot reevaluate an alien investor's plan "ab initio" at the removal of conditions stage. Rather, that decision finds that CIS can only evaluate whether the alien sustained the actions required of the plan approved through the adjudication of the original petition. *Id.* In that case, however, the plaintiffs' initial petitions were approved and they adjusted to conditional resident status without notice that the plans approved by legacy Immigration and Naturalization Service (the Service) were nonconforming. In cases involving eligible aliens, defined above, Congress has required CIS to disregard the revocations of approval of Form I-526 petitions approved in error,³ where the error relates to the issue of a qualifying investment. The intent of this change is to allow eligible aliens an opportunity to correct any problems in their investments during the conditional residence period, as is evident from the later dates by which the investor must have complied with the statutory requirements. Section 11032(e)(3) of the Public Law.

In light of this background, eligible aliens who have had the approval of their petitions revoked cannot rely on *Chang* as they, unlike the class members in that case, have been placed on notice of the deficiencies in their investment plans. Given that notice, the reasoning in *Chang* does not apply; we cannot conclude that eligible aliens will suffer any hardship in being afforded an extra two years to ensure that their investments, of which they have been advised are non-qualifying, become

³ As of this date, no federal court has struck down any of the interpretations set forth in the 1998 precedent decisions as improper or inconsistent with the regulations in effect prior to the issuance of those decisions.

qualifying equity investments. We emphasize that the director in this matter did not “retroactively”⁴ apply the 1998 precedent decisions relating to this classification. The regulations, promulgated prior to the filing of the instant petition and quoted in the body of this decision, clearly and unambiguously require an equity investment. For the reasons discussed above, the petitioner has not demonstrated a qualifying equity investment.

ORDER: The appeal is dismissed with a finding of fraud and material misrepresentation.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the petitioner’s eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.

⁴ The precedent decisions merely interpreted the regulations that existed prior to 1998. As of this date, no federal court has held that the precedent decisions themselves constituted improper rulemaking or that they could not be applied to cases filed prior to the issuance of those decisions. [REDACTED] is not contrary to this statement; that court determined only that an approval of the initial petition prior to 1998 constituted an approval of the investment plan upon which the petitioner could rely if he adjusted status based on that approval.