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

PUBLIC COPY

[redacted]

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JAN 11 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 94 229 50633

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

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 Director, California Service Center, initially approved the employment-based visa petition. Upon review of the record, the director properly issued a notice of intent to revoke and ultimately revoked approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a corporation organized in the State of California in June 1991 under the name of ANEC International Trading, Inc. The petitioner later changed its name to Yee Top, Inc. in August of 1993. The petitioner claims to be engaged in the import, export, and trading business. It seeks to employ the beneficiary as its vice-president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director initially approved the petition on September 27, 1994. On September 26, 1996, the legacy Immigration and Naturalization Service (INS) Los Angeles District Office issued an intent to revoke the approved petition. The intent to revoke was based on the findings of a consulate investigation that determined that the claimed parent company in Shenyang, China no longer existed. After properly issuing a notice of intent to revoke, the director revoked the approval of the petition on August 2, 1998. In a May 20, 2002 decision, the AAO affirmed the director's decision. The AAO also determined, beyond the decision of the director, that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

On June 18, 2002, counsel for the petitioner submitted a motion to reconsider and reopen the AAO's decision. Counsel asserts that the AAO's decision was based on an incomplete file. Counsel points out that the AAO acknowledged that the appellate review was completed on a reconstructed file. Counsel argues that it is unreasonable for the AAO to determine that the evidence in the record does not substantiate that the foreign entity employed anyone when the petition was filed, when the legacy INS had lost the file. Counsel also assumes that the foreign entity's business income tax forms filed prior to 1995 were provided in the original file and that the petitioner's stock certificates and stock ledger were provided in the original file but not in the reconstructed file. Counsel contends that the documents in the original file were sufficient to justify approval of the petition and that Citizenship and Immigration Services (CIS) should not use its own inefficiency and negligence to deny the petition. Counsel contends that CIS is estopped from denying a petition it once approved and asserts that the foreign entity is doing business and that a qualifying relationship exists between the petitioner and the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. The petitioner has not submitted new facts supported by affidavits or other documentary evidence. Counsel's assertions regarding the reconstructed file do not constitute new facts. Counsel does not submit new evidence or explanations regarding the lack of documentary evidence in the file. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502

U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Neither counsel nor the petitioner has submitted any pertinent precedent decisions to establish that the AAO decision was based on an incorrect application of law or policy. 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 unrebutted, 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)).

Counsel has not provided a proper basis to reopen or reconsider the previous decision. Counsel, on motion, had opportunity to present any evidence he believed had not been included in the reconstructed filed, or reasonable explanations detailing why the supporting documents were not available. However, counsel did not provide evidence not previously considered or explanations regarding the location of and ability to obtain pertinent documents. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, counsel's assertions that the foreign entity was doing business when the petition was filed and that the petitioner and foreign entity enjoy a qualifying relationship are not supported on motion with affidavits or other documentary evidence. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Finally, the AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The AAO's jurisdiction is limited to that authority the Secretary of the United States Department of Homeland Security specifically granted to it. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.

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 not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.