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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
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Office: TEXAS SERVICE CENTER

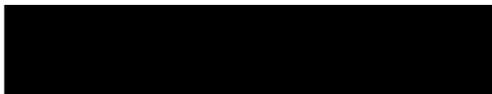
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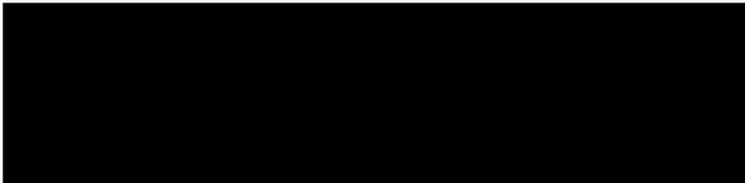
Petitioner:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition, and ultimately revoked the approval of the petition following the issuance of a notice of intent to revoke. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the instant immigrant petition on September 12, 2001 to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner claims to be a limited partnership organized in the State of Texas that owns, manages and operates retail stores. The petitioner seeks to employ the beneficiary as its president.

The director approved the employment-based immigrant petition on March 5, 2002. On May 24, 2004, U.S. Citizenship and Immigration Services (USCIS) requested further evidence in connection with the beneficiary's Form I-485, Application to Register Permanent Resident Status of Adjust Status. On February 6, 2009, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition on the grounds that, based on inconsistencies between the documentation the petitioner provided in response to the I-485 request for further evidence and that submitted with the I-140, the petitioner had failed to establish that a qualifying relationship exists between the U.S. petitioner and the beneficiary's foreign employer.

After reviewing the petitioner's response to the NOIR, the director revoked the approval of the petition on March 24, 2009. The director concluded that the petitioner had failed to establish that there exists a qualifying relationship between the U.S. petitioner and the beneficiary's foreign employer. The director found the petitioner has not shown that the foreign entity and the U.S. petitioner have similar ownership or controlling interests such that they can be considered affiliates as claimed. The director also noted that the evidence of record does not show that the individual who signed the Form I-140 had the authority to submit petitions on the company's behalf.

On appeal, counsel for the petitioner asserts that the director's decision is in error. Counsel contends that the petition may not be revoked because the beneficiary is already inside the United States. Counsel claims that the person who submitted the petition on behalf of the petitioner has indirect ownership interest in the petitioner and, therefore, has authority to file the petition. Counsel further contends that the foreign company and the U.S. company are affiliated since the beneficiary holds partnership interest in both entities.

I. Revocation of an Approved Immigrant Petition

At the outset, the AAO will address counsel's contention that procedurally, the USCIS may not revoke the petition because the beneficiary is already physically present in the United States. Here, counsel relies on *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), where the United States Court of Appeals for the Second Circuit interpreted section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that, pursuant to *Firstland*, USCIS may not

revoke the approval because the beneficiary was already in the United States when the director issued the revocation.

It is noted that neither the beneficiary nor the petitioner in this instance resides or is located within the jurisdiction of the Second Circuit. Furthermore, *Firstland* is no longer a binding precedent. On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary of Homeland Security 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

8 U.S.C. § 1155 (2005)

Further, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter, and the AAO does not find persuasive counsel's claim that the director is barred from revoking the petition under these circumstances.

Regarding the finding of "good and sufficient cause" for the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) 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 Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition should not have been approved based on the evidence provided is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Accordingly, the AAO finds that, contrary to counsel's claim, the director is not procedurally barred from revoking the petition under these circumstances.

The AAO stresses that the petitioner must establish that the petitioner and beneficiary were eligible for the benefit sought at the time the instant petition was filed on September 12, 2001. A petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petition approval in this matter was ultimately revoked due to the director's subsequent determination, upon reviewing additional evidence the petitioner provided, that the petition was erroneously approved in March 2002, rather than based on a conclusion that the beneficiary and petitioner became ineligible for the benefit sought after the approval of the petition. Accordingly, the AAO will confine its analysis of the evidence to documentation that is contemporaneous with the beneficiary's priority date of September 12, 2001.

The evidence in the record of proceeding dates from 2000 through 2009. Federal regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed or when the visa is issued by a United States consulate. 8 C.F.R. § 245.1(a), 22 C.F.R. § 42.41. The petitioner bears the ultimate burden of establishing eligibility for the benefit sought, and that burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). In the present matter, no immigrant visa was issued as a result of the petitioner's approved Form I-140. Therefore, the petitioner's burden to maintain eligibility for the benefit sought continued well beyond 2001 and did not terminate simply because the I-140 was approved.

II. The Law

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140, Immigrant Petition for Alien Worker, for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

III. Qualifying Relationship

The primary ground for revocation of the petition is the director's determination that the petitioner has failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

On the Form I-140 submitted on September 12, 2001, the petitioner stated its name as [REDACTED]. In an attachment to the Form I-140, the petitioner states that "[REDACTED], the [p]etitioner herein," is a Texas limited partnership established in February 2000 that is "majority owned and controlled" by the beneficiary. The petitioner also stated that [REDACTED] the beneficiary's foreign employer in Pakistan, "is also majority owned and controlled" by the beneficiary. The petitioner claimed that the U.S. and foreign companies are therefore affiliates based on common ownership.

Documentation relating to the foreign entity submitted with the Form I-140 included: a Chamber of Commerce membership certificate; various business certificates and license; bank statements; documents entitled "Assessment Orders" issued by the "Income Tax/Wealth Tax Department Lahore" for the years 1998-1999, 1999-2000 and 2000-2001; and a number of documents entitled "Notice of Demand Under Section 85 of the Income Tax Ordinance, 1979" dated from December 1997 through December 2000. The Assessment Orders state that the foreign company is "an association of persons consisting of two members [REDACTED] and [REDACTED] [sic]." The respective ownership interests of the members are not stated in any of the documents.

With respect to the U.S. company, the petitioner submitted: a number of leases for its retail locations; its Texas Sales and Use Permit dated April 1, 2000; the company's Internal Revenue Service (IRS) Form 1065, U.S. Return of Partnership Income, for the year 2000; bank statements (in the name of "Quantum Petroleum LLC") for January through March 2001; and IRS Forms W-2, Wage and Tax Statements, for its employees. Schedules K to the petitioner's 2000 IRS Form 1065 identify [REDACTED] and [REDACTED] as general partners of the U.S. company, with 34%, 33% and 33% ownership, respectively.

The petition was approved on March 5, 2002. Subsequently, the director issued a request for additional evidence on May 24, 2004, in connection with the beneficiary's Form I-485. Among other things, the director requested a current letter of employment or job offer. In response to that request, the beneficiary submitted an undated letter on its letterhead, signed by [REDACTED] as president, confirming that the beneficiary "has been working with [the company], continuously as a General Partner since he received his L-1A visa on June 21, 2000" and that the company "would like

to employ him permanently as a General Partner starting from the day that he receives his permanent residence status . . ."

In the NOIR issued on February 6, 2009, the director stated that conflicting information was found in the record and noted the following:

1. An individual named [REDACTED] signed the Form I-140 and the original Form G-28, Notice of Entry of Appearance as Attorney or Representative, on behalf of the petitioner, and also signed, as president of the petitioner, the letter confirming the beneficiary's employment as "General Partner" of the petitioner. However, according to the Form I-140 and the Form G-325-A, Biographic Information, submitted with the Form I-485, the beneficiary is president of the company, not Mr. [REDACTED]
2. The petitioner's limited partnership agreement dated February 17, 2000 shows that the general partner is [REDACTED] (owned by the beneficiary) with 0.1% interest, and the limited partners are the beneficiary with 50.9% interest and [REDACTED] with 49% interest. There is no evidence that [REDACTED] is a limited partner or president.
3. With respect to the foreign entity, the director noted that the record contains no documentation showing the actual ownership of the company.

The director stated that, based on these deficiencies in the record, the petitioner and the foreign entity do not appear to be affiliates and, consequently, the beneficiary does not qualify for the requested classification.

The petitioner responded to the NOIR in a letter dated March 4, 2009. The petitioner confirmed that its ownership structure at the time the original petition was filed was as stated in the NOIR. The petitioner further explained that [REDACTED] the general partner of the petitioner, "has the exclusive right and authority to manage the business affairs" of the petitioner, including the authority to appoint [REDACTED] as the president of the company at the time the petition was filed. However, the petitioner claimed, that appointment "in no way changes the fact the ultimate management decisions with regard to the business of [the petitioner] have always rested with [REDACTED] [REDACTED] which is wholly owned and managed by [the beneficiary] as president." The petitioner further asserted that the 0.1% ownership interest in the petitioner, combined with the 50.9% ownership interest held by the beneficiary, gives the beneficiary a majority ownership interest in the petitioner.

With respect to the foreign entity, the petitioner claimed that at the time the petition was filed, the foreign entity was a general partnership organized under the laws of Pakistan owned 50% by the beneficiary and 50% by [REDACTED], who died in March 2002. The petitioner asserted that irrespective of [REDACTED] interest in the foreign entity, the beneficiary's 50% ownership is sufficient to render the foreign entity and the petitioner affiliates. The petitioner submitted a copy of a partnership deed, dated January 1, 1995, between the beneficiary and [REDACTED] as partners "in equal shares."

Lastly, the petitioner explained that the letter confirming the beneficiary's employment that was submitted in connection with his I-485 "should have stated that [he] owns the general partner entity not that he himself is the general partner."

The director issued a notice of revocation of the petition on March 24, 2009, based on the grounds expressed in the NOIR.

On appeal, as already addressed above, counsel for the petitioner contends that the revocation of the petition is in error because USCIS "adopted the statutory language of INA §205 without taking into account applicable case law and the fact that the beneficiary ... is already inside the United States." Counsel further argues that "[a]pplicable case law requires a much broader definition of 'affiliate' than that adopted by the Service in this case" and that "[u]nder applicable case law, the definition of 'affiliate' would encompass the relationship that existed between the Petitioner and the foreign business entity." Counsel cites a number of cases, but did not elaborate on their applicability to the present facts. Counsel further claims that in referring to the petitioner as an LLC, limited liability company, rather than an LP, limited partnership, the Service is confused about the nature of the beneficiary's ownership interest in the petitioner and, therefore, the affiliation between the petitioner and the foreign entity. Finally, counsel asserts that [REDACTED] has the authority to submit the petition on behalf of the petitioner since he has a 50% interest in Northwest Petroleum, which in turn has a 49% interest in the petitioner.

With respect to counsel's assertion that the director's decision demonstrates confusion and lack of understanding of the U.S. company's corporate formation, the AAO notes that the petitioner itself introduced this confusion, as the evidence of record is inconsistent in its references to the company's name. It is noted that the petitioner described itself in the attachment to the Form I-140 as a limited partnership, and its IRS Form 1065 for the year 2000 identifies the petitioner as [REDACTED]. However, on the Form I-140 itself, the petitioner stated its name as [REDACTED]. On copies of bank statements submitted with the Form I-140, the petitioner's name is also stated as [REDACTED] rather than "LP." The petitioner has provided no explanation for these inconsistencies in references to its own name in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Further, contrary to counsel's claim, the AAO does not find that the confusion regarding the petitioner's name has any bearing on the director's substantive analysis of the criteria for eligibility in this instance.

The AAO now turns to the issue of whether the petitioner has established that it has a qualifying relationship with the foreign entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See generally § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between the United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Here, as the petitioner claims that the U.S. and foreign entity are "affiliates," the petitioner must establish that both entities "are owned and controlled by the same parent or individual" or "owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity." The AAO finds that the record is insufficient to support the conclusion that there is a qualifying relationship between the two entities.

With respect to the ownership of the U.S. company, the director noted that the petitioner's limited partnership agreement dated February 17, 2000 indicates that the company's general partner is [REDACTED] with 0.1% interest, and the limited partners are the beneficiary with 50.9% interest and [REDACTED] with 49% interest. In response to the NOIR, the petitioner confirmed the above information and further claimed that [REDACTED] is wholly owned by the beneficiary; therefore, the beneficiary owned 51% in the company, a majority ownership interest, at the time of filing. However, according to Schedules K to the petitioner's IRS Form 1065 for the year 2000, the company is 34% owned by the beneficiary, 33% owned by [REDACTED], and 33%

owned by [REDACTED]. Thus, the ownership structure described in the partnership agreement is inconsistent with, and appears to be superseded by, the ownership information disclosed in the petitioner's 2000 tax return, which presumably reflects the U.S. company's ownership as of December 31, 2000. Further, there is no evidence that in between the filing of the 2000 tax return and the filing of this petition in September 2001, the ownership structure of the U.S. company reverted back to that described in the original partnership agreement. The petitioner has failed to address these inconsistencies regarding its ownership structure at the time the petition was filed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Again, any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. In light of these unresolved inconsistencies, and in the absence of further evidence, the AAO cannot determine the ownership structure of the U.S. company at the time the petition was filed.

With respect to the foreign entity, the only evidence of its ownership structure in the record is the partnership deed dated January 1, 1995, in which the beneficiary and [REDACTED] are described as partners. The deed stated that the initial capital was to be provided by the partners "in equal shares," and also stipulated that "further capital ... shall be contributed by the partners in equal share." There is no evidence that this partnership "in equal share" remained in place as of the date the petition was filed. Even assuming that the deed remained in effect, it would only demonstrate that the foreign entity is owned in equal share by the beneficiary and another individual who has no ownership interest in the U.S. company. There is no evidence to indicate that both the foreign entity and the petitioner are "owned and controlled by the same parent or individual" or "the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity" at the time the petition was filed.

Accordingly, the record is insufficient to demonstrate that the petitioner and the foreign entity are affiliates, as the petitioner claimed. Nor does the record establish that a parent-subsidiary relationship exists between the two entities. As such, the petitioner has failed to meet the requirement of establishing that a qualifying relationship existed at the time the petition was filed between the petitioner and the beneficiary's foreign employer.

Finally, counsel claims on appeal that USCIS erroneously concluded that [REDACTED] did not have authority to submit petitions on behalf of the petitioner. Counsel claims that [REDACTED] authority to act on behalf of the petition stems from his 50% partnership interest in [REDACTED], which in turn has a 49% interest in the petitioner. However, the record contains no documentation of [REDACTED] ownership interest in [REDACTED] nor his claimed authority to act on behalf of the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, [REDACTED] signed the Form G-28 submitted with the Form I-140 as "limited partner," whereas Schedules K to the petitioner 2000 tax return listed him as a general partner. This inconsistency has not been addressed by the petitioner or by counsel.

More importantly, the petitioner's and counsel's claims regarding [REDACTED] role in the company reveal further material inconsistencies in the record regarding the claimed position of the beneficiary in the company. As noted earlier, the record contains a letter on the petitioner's letterhead, signed by [REDACTED] as president, submitted in response to the director's request for evidence in May 2004 in connection with the beneficiary's I-485 petition. The letter confirms that the beneficiary "has been working with [the company], continuously as a General Partner since he received an L-1A visa on June 21, 2000" and that the company "would like to employ him permanently as a General Partner starting from the day that he receives his permanent residence status ..." The fact that [REDACTED] signed the 2004 letter as the president of the company and his statement that the beneficiary has always been employed by the petitioner as "general partner" are inconsistent with all of the petitioner's representations in the Form I-140 and its supporting documentation that the beneficiary was to be employed as president of the company. In addition, it is noted that the beneficiary's Form G-325, Biographic Information, submitted with the beneficiary's Form I-485, also states that the beneficiary was president of the petitioner from March 2000 to "present time." The petitioner's assertion in response to the NOIR that [REDACTED] statement in his 2004 letter regarding the beneficiary's role in the company is an error based on advice of counsel is not persuasive. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Based on the foregoing discussion, the AAO finds that the director's notice of revocation was properly issued for "good and sufficient cause," and that the revocation of the petition approval was warranted. *See Matter of Ho*, 19 I&N Dec. at 590. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.