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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

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**U.S. Citizenship
and Immigration
Services**



B4

DATE: **SEP 28 2011** OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: 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 preference visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of his intention to revoke the approval of the preference visa petition, and his reasons therefore. The director ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Texas corporation that seeks to employ the beneficiary as its 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.

Upon further review of the record, the director determined that the petitioner failed to establish that 1) the beneficiary was employed abroad in a managerial or executive capacity; 2) the beneficiary would be employed by the petitioning entity in a qualifying managerial or executive capacity; 3) the petitioner has a qualifying relationship with the beneficiary's claimed employer abroad; and 4) the foreign entity continues to do business.

On appeal, counsel disputes the director's findings and asserts that the director failed to provide sufficient evidence to justify revoking the previously approved petition. After reviewing the submissions provided herein, the AAO hereby withdraws the fourth ground as a basis for the revocation. Accordingly, the instant decision will focus primarily on the three remaining grounds that were cited in the director's decision.

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 and 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 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.

The first two issues to be addressed in this proceeding call for an analysis of the beneficiary's job duties. Specifically, the AAO will examine the record to determine whether the beneficiary was employed abroad and whether he would be employed in the United States in a qualifying managerial or executive capacity.

In support of the Form I-140, the petitioner provided an undated statement claiming that the beneficiary "is currently employed by us as an executive or manager." The petitioner stated that the beneficiary would continue to be responsible for hiring and firing managers, supervising subordinate employees, overseeing the preparation of sales and inventory reports, reviewing sales data, budgets, and financial and expense reports, establishing and implementing policies, and overseeing the marketing campaigns developed by managerial subordinates.

With regard to the beneficiary's employment abroad, the petitioner stated that the beneficiary was employed in the position of general manager and was responsible for training and overseeing managerial employees, hiring and firing employees, directing communications, managing finances, overseeing the marketing efforts, and hiring accountants and attorneys. The petitioner stated that the beneficiary supervised five employees.

No further information was provided to describe the beneficiary's job duties in either position. Despite these deficient job descriptions, the director approved the petition on June 10, 2003.

Notwithstanding the approval of the petition, further review of the record was subsequently conducted and the director determined that the petitioner had failed to establish eligibility at the time of filing. Therefore, on May 7, 2008, the director issued a notice of intent to revoke (NOIR) the petition, finding the description of the foreign employment to be redundant and uninformative.

With respect to the beneficiary's employment with the U.S. entity, the director stated that the petitioner failed to provide the names and position titles of its employees and generally failed to establish that the beneficiary's position is that of an executive or manager.

In response, the petitioner provided a statement from counsel dated June 4, 2008. Counsel pointed out that the petitioner had provided quarterly reports and IRS Form W-2 statements in support of the initial petition and further stated that the beneficiary is the top senior executive within the petitioning entity. Counsel pointed out that the beneficiary has wide latitude in making executive and managerial decisions, including hiring and firing managers, supervising subordinates, establishing and implementing company policies, and reviewing financial reports. Counsel relied on the beneficiary's position title as president and the petitioner's employment of multiple employees as bases for concluding that the beneficiary's U.S. employment is within a managerial or executive capacity.

Neither counsel nor the petitioner provided any supplemental information about the beneficiary's employment with the foreign entity.

Accordingly, in a decision dated July 7, 2008, the director issued a final notice revoking the approval of the petition. The director referred to the statements previously provided with regard to the beneficiary's foreign employment and determined that the job description was overly vague with no information provided to allow

USCIS to determine that the beneficiary's subordinates were managerial or professional employees. The director made a similar finding with regard to the beneficiary's U.S. employment, noting that the petitioner failed to provide documentation establishing that the beneficiary's subordinates from 2001-2006 were professional or managerial employees.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). The AAO will then consider this information in light of the employing entity's organizational hierarchy, the beneficiary's position therein, and the entity's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks.

On appeal, counsel focuses on the beneficiary's position title and his top-most placement within the petitioner's organizational hierarchy, asserting that these factors point to the beneficiary's ultimate decision-making authority. Counsel also challenges the legality of the revocation, citing a district court decision in order to establish that the director did not adequately justify his decision to revoke a previously approved petition.

The AAO finds that the counsel's arguments are unpersuasive and fail to overcome the grounds cited for denial. As a preliminary matter, it is noted that the AAO cannot determine the beneficiary's employment capacity without first considering the job description. Despite counsel's focus on the beneficiary's placement within the organizational hierarchy and the decision-making authority that undoubtedly goes along with being the company president, neither fact establishes that the beneficiary has been or would be employed in a qualifying managerial or executive capacity. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The record does not contain a comprehensive description of the beneficiary's day-to-day tasks with either entity, nor does it include a description of either entity's staffing composition. The petitioner's failure to provide this essential documentation precludes the AAO from being able to assess the beneficiary's managerial or executive capacity either in his position with the foreign entity or in his proposed position with the U.S. entity.

Additionally, while the petitioner has indicated that the beneficiary's time abroad and in his proposed employment has been and would be allocated, at least in part, to the supervision of other employees, no evidence has been provided to establish that the beneficiary's subordinates in either position were and would be managerial, supervisory, or professional employees. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO further notes that in addition to providing a detailed job description, the record must establish that the employing entity, whether that entity is the petitioner or the foreign employer, had or has the human resources to relieve the beneficiary from having to primarily perform the daily operational tasks that are outside the realm of what is deemed to be managerial or executive. In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v.*

Sava, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003). Here, the evidence presented does not clarify whether the foreign entity's organizational hierarchy was sufficient to employ the beneficiary in a primarily managerial or executive capacity. While the petitioner provided a number of employee lists, which accounted for a portion of the beneficiary's period of employment abroad, no information was provided to clarify how any of these employees relieved the beneficiary from having to perform non-qualifying tasks; nor did the petitioner establish which employees were the beneficiary's direct subordinates or that such subordinates were managerial, supervisory, or professional employees.

With regard to the beneficiary's proposed employment, the record similarly lacks evidence to establish that the petitioner had the staffing composition to relieve the beneficiary from having to primarily perform the daily operational tasks at the time the Form I-140 was filed. Although the petitioner provided an employer's quarterly report for the first quarter of 2002, the record shows that the Form I-140 was filed during the third quarter, thus indicating that the information pertaining to the first quarter is irrelevant in terms of assessing the petitioner's eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, even if the AAO were to consider the information provided in the 2002 first quarterly employer's report, the record shows that the petitioner employed two full-time and two-part employees aside from the beneficiary himself. The petitioner provided no information establishing the subordinate employees' tasks and position titles, the positions they assumed within the petitioner's organizational hierarchy with respect to the beneficiary, or their respective educational credentials. It is therefore unclear how these employees relieved the beneficiary from having to primarily perform non-qualifying tasks, which of these employees were positioned as the beneficiary's direct subordinates, and, for those individuals who were subordinate to the beneficiary, whether they can be deemed managerial, supervisory, or professional employees.

Although the AAO takes note of the more recent employer's quarterly reports that have been submitted on appeal, these documents also fail to address the issue of the petitioner's eligibility as of October 17, 2002 when the petition was filed. Furthermore, the more recent quarterly reports show that the petitioner's work force was reduced to a staff of three employees from 2005 through 2007 after which time the petitioner appears to have hired one additional part-time employee as reflected in the first quarter of 2008. The petitioner has failed to establish that this staff reduction has not had the adverse effect of requiring the beneficiary to be more heavily engaged in the performance of non-qualifying tasks. While the AAO acknowledges that no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to his/her proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In the present matter, the petitioner has failed to provide the evidence and information that is necessary to determine what specific tasks the beneficiary performed during his employment abroad and what specific tasks he planned to perform in the course of his proposed employment with the U.S. entity. The petitioner also provided little relevant information about either entity's organizational hierarchy or the subordinates who assisted the beneficiary abroad or those who have been assisting him in the United States. In light of these findings, the AAO concludes that the approval was issued in error and the decision to revoke the erroneous approval will not be withdrawn.

The next issue to be addressed in this decision is whether the petitioner has a qualifying relationship with the beneficiary's claimed employer abroad.

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 that they are 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.

In the present matter, the petitioner has maintained the claim that it is an affiliate of the beneficiary's foreign employer by virtue of both entities being owned by one common owner. However, as previously noted, going on record without supporting documentary evidence that is valid and reliable is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. 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). Furthermore, 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. 582, 591-92 (BIA 1988).

In the NOIR, the director noted a list of documents that the petitioner submitted to show that the beneficiary is the owner of the foreign entity. The petitioner's submissions included the following:

1. A conveyance deed of immovable property dated May 25, 2000. This document was accompanied by a sale deed dated May 20, 1993 in which the beneficiary was named as purchaser of a property with the name [REDACTED]

2. A sublease document dated June 13, 1996 in which the beneficiary was identified as a managing partner and the sub-lessee of four properties, which were referred to as flat nos. 14, 15, 16, and 17 and whose respective legal descriptions were provided in the body of the text.
3. A letter dated December 4, 2000 typed on the letterhead of the Traders Welfare Association of the [REDACTED] identifying the beneficiary as the owner of [REDACTED]
4. A trade enrollment certificate pertaining to the foreign entity in which the owner of the business was simply identified as Abdul and the signature of the company's representative is that of [REDACTED], not Abdul Noorjee, which is the name used by the beneficiary.
5. A tax assessment receipt for the 2000/2001 tax year identifying the beneficiary along with Noor Store as the assessee.
6. A document entitled Form of Declaration of Undisclosed Income for [REDACTED], the foreign employer. Given the choice between individual, AOP, HUF, firm, or company, the term individual was checked off as an indication as to the status of the type of business.
7. Bank statements containing the credit/debit transactions and the balance on various dates ranging from 1998-2000. All bank statements pertain to [REDACTED]

With regard to the ownership of the petitioning entity, the following documents were submitted:

1. The petitioner's certificate of incorporation dated July 27, 1999 accompanied by the articles of incorporation also dated July 27, 1999. Article four of the latter document shows that the petitioner was authorized to issued 1,000,000 shares and article five indicates that the petitioner must receive a least \$1,000 in order to commence doing business.
2. The petitioner's certificate of incorporation dated August 8, 2002 accompanied by the articles of amendment also dated August 8, 2002. Article four of the latter document shows that the petitioner was authorized to issue [REDACTED] shares and article five indicates that the petitioner must receive a least \$[REDACTED] in consideration in the form of money, labor, or property order to commence doing business. Article seven identifies the beneficiary as the petitioner's sole director and article eight indicates that 1,000 shares were outstanding at the time the articles of amendment were adopted.
3. Two separate pages, each containing the heading Stock Certificate, dated July 28, 1999 and October 15, 2000. The earlier of the two documents identified [REDACTED] as owner of 1,000 shares of the petitioner's common stock of which 1,000,000 were authorized to be issued, while the latter document identified the beneficiary as the owner of 1,000 shares of the petitioner's common stock of which [REDACTED] were authorized to be issued. It is noted that neither document purporting to issue stock contains a number to identify each one in an order of succession. These documents are followed by a bill of sale, also dated October 15,

2000 in which [REDACTED] sold 1,000 shares of his stock in the petitioning entity to the beneficiary.

4. Another document dated October 15, 2000 entitled Notice to Certificate Holder. The document informs that [REDACTED] sold and transferred 200 shares of an unspecified entity to [REDACTED]. Although this document refers to a "within named corporation," no clarification was provided as to explain which specific document contains the name of the corporation whose stock was being redistributed.

In the decision dated July 7, 2008, the director concluded that the record fails to establish that the foreign and U.S. entities are commonly owned. Although the director determined that the beneficiary's ownership of the foreign entity is supported by the submitted documentation, he did not make a similar determination with regard to the documents pertaining to the petitioner's ownership. Rather, the director observed that the record lacks evidence showing the specific ownership of the petitioning entity or when the beneficiary became an owner. The director pointed out that the documents purporting to transfer ownership to the beneficiary in October of 2000 are inconsistent with the petitioner's 2001 tax return, which does not identify the beneficiary as an owner at Schedule E where such information would be provided.

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 United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *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.

After reviewing the documentation pertaining to the foreign and U.S. entities, the AAO cannot conclude that these entities are commonly owned. Like the director, the AAO is also troubled by the fact that the petitioner's 2001 tax return does not identify the beneficiary as a shareholder even though ownership was purportedly transferred to the beneficiary on October 15, 2000 and the IRS Form 1120 was signed by the preparer on May 23, 2002, which is more than eighteen months after the date on the stock certificate. As indicated above, the petitioner maintains the burden of resolving any inconsistencies on record by submitting independent objective evidence. *Matter of Ho*, 19 I&N Dec. 591-92.

One other key deficiency concerning the issue of a qualifying relationship is the petitioner's complete reliance on stock certificates as a means of determining ownership. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control. That being said, the document entitled Notice to Certificate Holder refers

to individuals whose respective relationships to the petitioning entity have not been disclosed. The same document seemingly indicates that other shares, in addition to the 1,000 shares that were issued to the beneficiary, may have been issued. Without a stock transfer ledger documenting the issuance and/or cancellation of stock certificates, the AAO cannot conclude that the petitioner has provided sufficient evidence establishing its ownership and control and without such evidence, we cannot conclude that the petitioning entity and the beneficiary's foreign employer share common ownership.

Additionally, the AAO observes that the record lacks sufficient evidence to establish that the beneficiary's foreign employer is a corporation or some other legal entity. Rather, the record indicates that the beneficiary was the sole proprietor of the foreign company. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). Most importantly, neither a sole proprietorship nor a partnership is a legal entity apart from its owner or owners. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984). In light of 8 C.F.R. § 204.5(j)(2) under the definition of affiliate at subsection (B), which requires that the foreign employer be a legal entity, any foreign employer that is held as a sole proprietorship would not qualify and on the basis of this additional finding a qualifying relationship can not be said to exist between the U.S. petitioner and the beneficiary's foreign employer.

In discussing ownership of the U.S. entity, the director determined that the record has not been supplemented with the necessary supporting evidence. The director pointed out that while the petitioner provided a new Articles of Incorporation, with a filing date of August 8, 2002, showing that the petitioner had issued 1,000 shares of its stock, the record did not include a share certificate establishing the identity of the recipient of the issued shares. The director also observed that another articles of incorporation was filed by the same entity on July 27, 1999. This document identified three directors and indicated that the petitioner was authorized to issue [REDACTED] shares. The record does not contain adequate documentation establishing the beneficiary as owner of either entity. With regard to the beneficiary's foreign employer, while the petitioner provided a copy of a trade enrollment certificate pertaining to the foreign entity, the owner of the business was simply identified as [REDACTED] and the signature of the company's representative is that of [REDACTED], not [REDACTED] which is the name used by the beneficiary. Additionally, while the AAO takes note of the beneficiary's signature on the foreign entity's tax returns, it is unclear whether he signed the tax returns in the capacity of an owner. In other words, the petitioner has not provided any state issued documentation in which the beneficiary is recognized as the owner of the foreign entity. Merely showing that the beneficiary was an acknowledged representative of that entity is not the same as establishing that the beneficiary is an owner.

Lastly, aside from addressing the merits of the grounds for revocation, counsel challenges the legality of revoking the petition. Counsel seemingly suggests that once a petition has been approved, the burden somehow shifts to USCIS to produce evidence of fraud, misrepresentation, or newly discovered facts prior to commencing revocation proceedings. Counsel's reliance on a district court case, regardless of the holding, will not have the effect of superseding published BIA precedent. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, however the analysis does not have to be followed as a matter of law. *Id.* at 719.

The phrase "good and sufficient cause" is defined by BIA precedent. *See Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). BIA precedents are binding on all DHS officers, including OCC attorneys, unless withdrawn/modified by the Attorney General or the BIA. *See* 8 C.F.R. § 1003.1(g). The Homeland Security Act of 2002 specifically stated that the determination and rulings of the Attorney General with respect to all questions of law are controlling, per sec. 101(a)(1) of the Act. A district court decision does not supplant the binding nature of a BIA precedent.

The BIA's interpretation of "good and sufficient cause" is premised entirely on the petitioner's burden of proof; there is no limitation to fraud or material misrepresentation cases. On the nature of good and sufficient cause, the BIA stated:

In *Matter of Esteime*, . . . 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. at 590 (citing *Matter of Esteime*, 19 I&N Dec. 450 (BIA 1987)).

In *Matter of Ho*, the petition's approval was revoked because it had been approved by the INS district director in error. The BIA stated that "[b]y itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition." *Id.* Again, this is far, far below the fraud and material misrepresentation threshold.

Because the BIA precedent is binding authority, any district court holding that suggests that "good and sufficient cause" should be limited to fraud and material misrepresentation is plainly erroneous. Again, this is a BIA precedent and it can't be withdrawn or overruled by a district court decision.

In summary, the petitioner has not established that it was eligible for the immigration benefit sought at the time of filing.

Accordingly, the approval of the petition will remain revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.