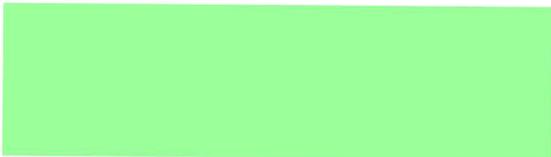


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **JUN 28 2013** Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal as moot.

The petitioner was incorporated in the State of California with the intent to engage in import/export trading. The petitioner seeks to hire 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. The director denied the petition, concluding that the petitioner failed to establish that a qualifying relationship exists between the U.S. and foreign entities

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

The petitioner bears the ultimate burden of proving eligibility; its burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1308 (9th Cir. 1984).

In denying the petition, the director found that the evidence does not demonstrate that the foreign entity paid for its stake in the U.S. company; the foreign entity claims to have paid \$80,000 for 800 shares of the U.S. company. The director observed that the beneficiary purchased the 800 shares on behalf of the foreign entity, but the documentation in the record does not establish the path of funds from the foreign entity to the U.S. petitioning company for purposes of demonstrating a capital investment. The director further found that the petitioner's statements and evidence in the record suggests that the foreign entity was attempting to avoid Chinese government banking regulations by way of the beneficiary's purchase of the share on its behalf.

On appeal, counsel for the petitioner presents evidence previously submitted in response to the RFE to establish the path of the funds from the foreign entity to the U.S. petitioning company. In response to the RFE, the petitioner submitted a "Loan Agreement," dated July 26, 1999, between the beneficiary and the

foreign entity. The agreement clearly stipulates that the beneficiary will form the subsidiary company in the United States using \$80,000 of her personal money on behalf of the foreign entity and issue common stock to the foreign entity. The foreign entity agrees to repay the \$80,000 plus interest to the beneficiary by August 31, 1999. The petitioner submitted a copy of the wire transfer and its bank statement showing that it received \$80,000 from the beneficiary on August 6, 1999. On August 9, 1999 the U.S. company issued stock certificate number one to the foreign entity for 800 shares. According to the U.S. company's stock ledger, no other stock certificates have been issued, and its IRS Income Tax Returns indicate that the foreign entity wholly owns the U.S. company. The petitioner submitted a copy of a check issued to the beneficiary by the foreign entity for ¥667,278 (approximately \$80,686) on August 16, 1999, as reimbursement for her purchase of the shares on its behalf. The petitioner also submitted a copy of the beneficiary's bank statement indicating that the check was deposited into her account on August 20, 1999.

In his decision, the director failed to acknowledge receipt of the above information and stated that the petitioner failed to document the path of the funds from the foreign entity to the U.S. petitioning company in order to establish the capital investment. The petitioner provided sufficient information to establish that the foreign entity is the parent of the U.S. petitioning company.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the submitted evidence is relevant, probative, and credible. The petitioner has established that a qualifying relationship exists between the U.S. and foreign entities.

However, in the present matter, the petitioner is not eligible to file for or gain approval of a Form I-140 petition on behalf of the beneficiary. During the course of verifying the validity of the petitioning entity, the AAO reviewed public databases, such as the California Secretary of State corporations database at <http://kepler.sos.ca.gov/>. The review of publicly available records reveals that as of December 3, 2007, the petitioner's status is "SUSPENDED."

The California Secretary of State defines the "suspended" designation:

The business entity's powers, rights and privileges were suspended or forfeited in California 1) by the Franchise Tax Board for failure to file a return and/or failure to pay taxes, penalties, or interest; and/or 2) by the Secretary of State for failure to file the required Statement of Information and, if applicable, the requires Statement by Common Interest Development Association. . . .

See <http://www.sos.ca.gov/business/be/cbs-field-status-definitions.htm>, accessed on June 27, 2013.

In this case, the petitioner's status was suspended by the California Franchise Tax Board, as a result of which a business "loses its rights, powers, and privileges to conduct business in California." See <https://www.ftb.ca.gov/businesses/faq/728.shtml>, accessed on June 27, 2013. As indicated above, in order to seek permanent employment of the beneficiary as a multinational manager or executive, the petitioner must be a United States legal entity that is the same employer as the firm, corporation, or other legal entity that employed the beneficiary abroad or the U.S. petitioner must be a subsidiary or affiliate of that foreign entity. As the petitioner's corporate status was suspended by the California Franchise Tax Board as of December 3, 2007, the petitioner is no longer a legal entity that is qualified to file for or gain approval of an immigrant petition in the beneficiary's behalf.

Accordingly, while the petitioner has not withdrawn the appeal in this proceeding, its suspended corporate status renders the issues in this proceeding moot. Therefore, this appeal is dismissed.

ORDER: The appeal is dismissed as moot.