

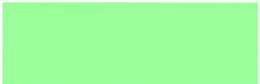
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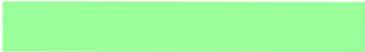
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **MAR 07 2014** Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petitioner's Form I-526, Immigrant Petition by Alien Entrepreneur. Subsequently, the Administrative Appeals Office (AAO) dismissed the petitioner's appeal based on his withdrawal, but the AAO made a separate finding that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS relating to an element material to their eligibility for a benefit sought under the immigration laws of the United States. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be granted, the previous decision of the AAO dismissing the appeal based upon its withdrawal will be affirmed, and the formal finding of misrepresentation will be withdrawn.

## I. FACTUAL AND PROCEDURAL HISTORY

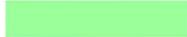
The petitioner filed Form I-526 based on an investment in a business, [REDACTED] but later adjusted his business activities into the fashion industry and indicated his business plan would instead focus on [REDACTED] a subsidiary of [REDACTED]. The AAO issued a notice of adverse information and intent to dismiss the appeal regarding the petitioner's submission of altered and inconsistent membership certificates and membership interest transfer ledger regarding [REDACTED]. Moreover, the AAO indicated that according to the Nevada Secretary of State, [REDACTED] was in "default" status, and the business license expired on May 31, 2013. Furthermore, the AAO indicated that according to the California State Board of Equalization, the "Seller's Permit" for [REDACTED] was closed on October 1, 2011, and was not valid after that day. In response, the petitioner requested that the appeal be withdrawn based on the termination of [REDACTED]. In addition, the petitioner claimed that he did not willfully and deliberately misrepresent material facts to gain immigration benefits. However, the AAO determined that the petitioner did not overcome the findings in the notice that he submitted fraudulent and altered membership certificates and a fraudulent and altered membership interest ledger. Therefore, the AAO found that he had sought to procure a benefit provided under the Immigration and Nationality Act through the willful misrepresentation of a material fact.

## II. MOTIONS

On motion, the petitioner, through counsel, does not challenge the AAO's decision regarding the dismissal of the appeal based on the withdrawal by the petitioner. Instead, the petitioner challenges the AAO's decision regarding the finding of willful material misrepresentation.

Based on a review of the state regulations counsel cites in his brief relating to the issuance of membership certificates and documentation submitted on motion, the petitioner has sufficiently overcome the previous findings of the AAO regarding the petitioner's willful misrepresentation of a material fact.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Accordingly, the previous decision of the AAO will be affirmed, the petition will remain



denied based on the petitioner's withdrawal of the appeal; however, the finding of misrepresentation will be withdrawn.

**ORDER:** The decision of the AAO dated September 5, 2013 is affirmed, the petition remains denied based on the petitioner's withdrawal of the appeal; however, the finding of misrepresentation is withdrawn.