U.S. Department of Homeland Security
20 Massachusetts Avenue, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

To: Service Center Directors
District Directors
Regional Directors
Director, National Benefits Center
Director, Office of Refugee, Asylum and International Operations

From: Robert C. Divine
Acting Deputy Director

Date: January 11, 2006

Re: *Matter of Chawathe* (January 11, 2006)

As Acting Deputy Director, I hereby designate the attached decision of the Administrative Appeals Office (AAO) in *Matter of Chawathe* a USCIS Adopted Decision. This AAO decision held that, for purposes of section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b), a publicly-held corporation may be deemed an "American firm or corporation" if the applicant establishes that the corporation is both incorporated in the United States and trades its stock exclusively on U.S. stock exchange markets. If the applicant is unable to establish by a preponderance of the evidence that the employer is both incorporated in the United States and trades its stock exclusively on U.S. stock markets, then the applicant must meet the requirements of *Matter of Warrach,* 17 I&N Dec. 285, 286-87 (Reg. Comm. 1979). As such, the nationality of the firm would be determined instead by the nationality of those who own 51 percent or more of the corporation. *Id.* The reasoning in this decision may also be applied in determining the nationality of a publicly-traded foreign corporation, where such a determination is required and not in conflict with existing law and/or regulations pertinent to the classification sought.

Finally, this Adopted Decision reemphasizes the preponderance of the evidence standard of proof applicable in most administrative immigration proceedings. Thus, 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) (defining "more likely than not" as a greater than 50 percent probability of something occurring). USCIS adjudicators are reminded, however, that this standard of proof does not apply to those applications and petitions where a higher standard is specified by law, such as the clear and convincing standard required to rebut the presumption of a prior fraudulent marriage pursuant to section 245(e)(3) of the Act and to determine citizenship of children born out of wedlock pursuant to section 309(a)(1) of the Act.

USCIS personnel are directed to follow the reasoning in this decision in similar cases.