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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: EAC 99 236 53085

Office: VERMONT SERVICE CENTER

Date: AUG 16 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be summarily dismissed.

The petitioner is engaged in international trade and business. It seeks to employ the beneficiary as its chief executive. Accordingly, it seeks classification of 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 determined that the petitioner had not established its ability to pay the proffered wage of \$50,000 per year at the time of filing.

8 C.F.R. 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On the Form I-290B Notice of Appeal, filed on March 22, 2001, counsel indicated that further evidence would be forthcoming within 30 days. To date, more than a year later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The Notice of Appeal form simply states in pertinent part:

We provided exactly and specifically what the Service requested in its notice of November 26, 2000. In fact, the Service's question in the notice was whether the employer had the ability to pay the proffered wage of \$50,000. The evidence submitted showed that the wage was paid. We do not understand why evidence that the wage was paid is not valid evidence on the question of whether the wage could be paid.

Counsel's assertion that the petitioner provided the evidence requested is without merit. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). Moreover, counsel's assertion does not correspond with the record. The record does not evidence that the petitioner paid the beneficiary a wage.

Although the appeal will be summarily dismissed, a further note will be made for the record. Beyond the decision of the director, the record does not establish that a qualifying relationship exists between the United States petitioner and the overseas company. The petitioner claims that 100 shares of common stock have been issued to Sibtrading Corporation at \$10 per share. This

claim is contradicted by the petitioner's Internal Revenue Service (IRS) Form 1120-A, U.S. Corporation Short-Form Income Tax Return for the 1999 year. The 1999 Form 1120-A reveals that the petitioner issued \$34,105 in common stock. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

Inasmuch as counsel does not identify an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is summarily dismissed.