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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: [redacted] Office: TEXAS SERVICE CENTER Date: 11 JAN 2002

IN RE: Petitioner: [redacted]

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)

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

Mary L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the immigrant visa petition and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is again before the Associate Commissioner on motion to reopen. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is a Texas corporation that claims to be engaged in fire prevention and maintenance services. It seeks to employ the beneficiary as its vice president of security systems and, therefore, endeavors to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the record did not show that (1) a qualifying relationship existed between the petitioner and the overseas entity, and (2) the beneficiary is currently employed and would continue to be employed by the U.S. entity in a primarily executive or managerial capacity. On appeal, the Associate Commissioner affirmed both of the director's findings.

On motion, counsel submits a brief. Counsel states, in part, that the beneficiary functions primarily as an executive or manager and that the record contains sufficient documentary evidence of the overseas entity's purchase of the petitioner's stock.

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 first issue to be examined is whether the director's and the Associate Commissioner's request for additional evidence to show that the overseas entity actually purchased the petitioner's stock was a reasonable request.

Both the director and the Associate Commissioner found that even though the petitioner had submitted a copy of a stock certificate and a letter from a certified public account that indicated that the overseas entity owned a majority of the petitioner's shares, the petitioner had not submitted evidence that the overseas entity paid monies for the stock, even though such evidence was requested.

On motion, counsel states that the Service failed to give adequate weight to the "legally competent documentary evidence" that the petitioner had already provided regarding the ownership of the petitioner. Counsel notes that the petitioner submitted copies of stock certificates, official statements of the petitioner, tax returns, and independent accountant reports to prove ownership, and that requiring a copy of the wire transfer of money from the overseas entity to the petitioner was an abuse of discretion by the Service.

Counsel does not present a persuasive argument on motion regarding whether the director's and the Associate Commissioner's request for the wire transfer of monies between the petitioner and the overseas entity was an abuse of discretion. The regulation at 8 C.F.R. 204.5(j)(3)(ii) specifically allows the director to request additional evidence in appropriate cases, as the Service may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. This is particularly relevant if evidence the petitioner submits as part of the petition, such as copies of its corporate tax return, shows that it received monies for the stocks.

Accordingly, the director's and the Associate Commissioner's denial of the petition based upon the petitioner's inability to produce evidence of a transfer of monies from the overseas entity to the petitioner for the purchase of stock was reasonable. Certainly, if a wire transfer occurred, or if the overseas entity paid for the petitioner's stock by another means, the petitioner would be able to secure documentary evidence of this fact. The petitioner's continued reluctance to submit evidence of a wire transfer calls into question the credibility of the petitioner's, statements that the overseas entity paid monies for the petitioner's stock, as well as the bona fides of the claimed relationship between the petitioner and the overseas entity. Therefore, the previous decisions of the director and the Associate Commissioner on this issue will not be disturbed.

The second and final issue to be examined is the beneficiary's role with the petitioning entity; the petitioner seeks the services of the beneficiary as its vice present of security systems.

Both the director and the Associate Commissioner found that the

beneficiary does not function primarily as a manager or an executive. Specifically, the Associate Commissioner stated that the beneficiary's job description did not evidence that the beneficiary has managerial control and authority over a function, department, subdivision or component of the petitioner.

On motion, counsel states that the beneficiary functions in a managerial/executive capacity with the petitioning entity; however, counsel does not present any persuasive argument in support of his conclusion. Although counsel states that the "proposed job duties of the beneficiary have demonstrated that the beneficiary is to be working "primarily" as a manager of an essential function," counsel does not present any new evidence on motion. 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).

Both the director and the Associate Commissioner did not find the proposed job duties of the beneficiary to be primarily managerial; therefore, without additional evidence from the petitioner that details how the beneficiary would specifically function as a manager on a primary basis, the Service will not overturn the prior decisions that were entered into the record on this issue.

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 met that burden.

ORDER: The previous decision of the Associate Commissioner, dated November 1, 2000, is affirmed.