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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



File: [Redacted] Office: TEXAS SERVICE CENTER Date: 11 JAN 2002

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)

IN BEHALF OF PETITIONER:



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

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 engineering design and consulting. It seeks to employ the beneficiary as its president and general manager 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 a qualifying relationship existed between the petitioner and the overseas entity. On appeal, the Associate Commissioner affirmed the director's finding and additionally noted that the record contained insufficient evidence that the beneficiary was employed in an executive or managerial capacity for at least one year in the three years immediately preceding the filing of the petition, and that the beneficiary would be employed by the U.S. entity in a primarily executive or managerial capacity.

On motion, counsel submits a brief, his own affidavit and a copy of his passport. Counsel states, in part, 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 Associate Commissioner affirmed the director's decision to deny the petition based upon the petitioner's inability to furnish

evidence of the overseas entity's purchase of the petitioner's stock. Specifically, the Associate Commissioner noted the following:

With regard to the money furnished to purchase the U.S. entity's stock, counsel claimed that "earnest money of \$80,000.00 has been paid to the counsel for the petitioning company as part of the payment for purchasing the stocks. The fund was delivered to the counsel in Mainland China during his business trips...inspecting the parent company." Counsel further asserted that he received this money for purchase of the U.S. entity's stock in behalf of the foreign entity. The petitioner submitted a statement with a similar claim. There is no independent evidence, such as receipts or other evidence showing that \$80,000 in cash was provided to counsel and then to the petitioner. The petitioner does not indicate how many trips counsel made to China or the amount of cash provided to counsel during each claimed trip, nor is there documentation showing that counsel made any trips to China. It is noted that counsel would have been required to declare certain cash amounts to U.S. Customs in U.S. Customs Form 4790. There are no copies of counsel's reports to U.S. Customs.

On motion, counsel submits an affidavit in which he states that he personally made 14 trips to the People's Republic of China (China) during the January 1998 through December 1999 time period, during which time he negotiated the purchase of the petitioner's stock by the overseas entity. Counsel states that "I have personal knowledge that the money stated to have been paid to De Anda Engineering or any business broker is true, and was supported by evidence submitted in this case." In support of his claimed trips to China, counsel submits a copy of his passport.

Counsel claims that he received a total of \$80,000 from the overseas entity during the January 1999 through July 1999 time period and that he made customs declarations on a Form 4790 regarding the cash that he brought back into the United States with him. Counsel maintains that he filed a Freedom of Information Act (FOIA) request to obtain copies of the Forms 4790 and that he will forward such documentation as soon as it becomes available.

Counsel does not present a persuasive argument on motion. Therefore, the previous decisions to deny the petition that were entered into the record will not be disturbed.

As stated in the Associate Commissioner's dismissal of the appeal, 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). Thus, counsel's affidavit, in which he states that he negotiated the purchase of the petitioner's stock by the overseas entity and personally carried monies into the United States, is not sufficient evidence for meeting the burden of proof in these proceedings. It is noted that even though counsel claims that he will submit copies of the Forms 4790 that he allegedly completed when bringing the \$80,000 into the United States, more than one year has passed since counsel made this statement and no additional evidence has been received into the record. Therefore, the record still does not contain any credible documentary evidence of a transfer of monies, property, or other consideration from the overseas entity to the petitioner for the purchase of the petitioner's stock.

Counsel's evidence on motion does not overcome the reasons cited in the director's and the Associate Commissioner's decisions to deny the petition. Additionally, although the Associate Commissioner cited in his decision two additional reasons why the petition could not be granted, counsel has chosen not to address those two issues on motion. Therefore, the Service will not overturn the prior decisions that were entered into the record.

Finally, it is noted that counsel states on motion that the Service "made a typo error" in calling the petitioner "De Andra Engineering Co., Ltd.," rather than "De Andra Engineering, Inc." However, the I-140 petition clearly states the name of the petitioner as "De Anda Engineering Co., Ltd.," not "De Andra Engineering, Inc." Therefore, if a typographical error did occur, it is entirely the fault of counsel, who prepared the petition filing.

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 9, 2000, is affirmed.