

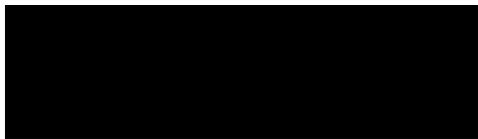


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U.S. Department of Justice
Immigration and Naturalization Service

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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: NOV - 6 2002

IN RE: Petitioner:
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:

SELF-REPRESENTED

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

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DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the state of Florida that claims to be engaged in the import and export of computer equipment. It seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify 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 sufficiently established the qualifying relationship between itself and the foreign entity. The director also determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity. The director further determined that the petitioner had not sufficiently established that it had been doing business for one year at the time the petition was filed.

On appeal, the petitioner submits a letter on behalf of the beneficiary, its Internal Revenue Service (IRS) Form 1120 for 2000, IRS Forms 1099, Miscellaneous Income for the year 2000, IRS Form 5472 for an undisclosed year and invoices and bills of lading with the earliest dated January 2000. The petitioner requests a more fair and equitable decision based on these documents.

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 petitioner has established a qualifying relationship with the foreign entity in

this case.

The director found that the petitioner had submitted inconsistent information regarding its ownership.

On appeal, the petitioner states on this issue that "the majority shareholders of the exterior control the operations in the United States, since they have a participation of 75 percent of the shares." The petitioner indicates that the IRS Form 5472 had been omitted in error.

The evidence submitted by the petitioner on appeal further adds to the confusion regarding its ownership. The petitioner initially submitted four stock certificates issued in the following amounts to the below named individuals:

Number 00 issued to Eudio O. Barbosa - 255 shares
Number 01 issued to Norberto A. Torres - 200 shares
Number 02 issued to Neida Coromoto Torres - 35 shares
Number 03 issued to Maria E. Montero - 10 shares

The petitioner's IRS Form 1120 for 1999 indicates foreign ownership of 51 percent. The petitioner did not submit a Form 5472 further describing this ownership. In response to the request for additional evidence on this issue, the petitioner submitted three stock certificates. Stock certificates number 00 and 01 appear identical to the ones described above. Stock certificate 02 although issued to the same person, reflects the number of shares issued to be 45 not 35. The petitioner does not provide the stock registry or any evidence that stock certificate number 03 and 04 were cancelled and were re-issued as stock number 03. Although this information does not affect the majority of the petitioner's ownership it raises significant concerns regarding the transfer of stock without proper documentation. In addition, as noted by the director, the IRS Form 1120 for 2000 that was submitted in response to the request for evidence does not reflect the percentage of foreign ownership of the petitioner. The IRS Form 1120 for 2000 submitted on appeal has been altered to reflect that the foreign ownership is 75 percent. The IRS Form 5472 submitted on appeal, does not reflect the year for which this form was filed or if it was filed but shows yet a different percentage of ownership. The IRS Form 5472 reflects that three individuals own a percentage of the petitioner in the following amounts:

 65 percent
25 percent
10 percent

There is no documentation to indicate that the petitioner filed amended returns with the IRS nor is there supporting documentation reflecting the changes in ownership of the petitioner. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence

offered in support of the visa petition. Further, 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). The petitioner has failed to provide sufficient evidence to show that the petitioner is the same employer, a subsidiary or affiliate of the foreign entity that previously employed the beneficiary. The petitioner has failed to establish that a qualifying relationship exists between the petitioner and a foreign entity.

The next issue to be examined is the nature of the beneficiary's employment with the United States entity. In denying the petition, the director found that the beneficiary was not an executive or a manager because the petitioner had not provided sufficient evidence to establish that the beneficiary's position was primarily of an executive or managerial nature. The director noted also that the petitioner had not provided IRS W-2 Forms as requested.

On appeal, the petitioner does not specify how the director's reasoning on this issue was flawed. The petitioner simply provides IRS W-2 Forms and IRS Forms 1099 in a belated effort to establish its number of employees. However, where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. Matter of Soriano, 19 I&N Dec. 764 (BIA 1988).

In addition, the petitioner has not provided a description of job duties that support a finding that the beneficiary is performing in a managerial or executive capacity. Although the job description is lengthy, the description is more indicative of an individual performing services for the petitioner rather than performing executive or managerial tasks for the petitioner. For example, the petitioner indicates that the beneficiary "search[es] for potential suppliers and technologically prepared for the exportation of computerized equipment," and "market[s] the services of graphic projects," and "prepare[s] . . . sales offers." An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. Matter of Church Scientology International, 19 I&N Dec. 593, 604 (Comm. 1988). Further, much of the job description is indecipherable and does not convey an understanding of what the beneficiary will be doing on a daily basis.

The record contains insufficient evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity or that the beneficiary's duties in the



proposed position will be primarily managerial or executive in nature. The description of the duties to be performed by the beneficiary in the proposed position does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary has managed a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties.

The third issue to be examined is whether the petitioner has provided sufficient evidence that it was doing business for at least one year at the time the petition was filed as required by 8 C.F.R. 204.5(j)(3)(i)(D).

The director determined that the petitioner had not provided any supporting documentation that would establish that the petitioner had been engaged in the regular, systematic, and continuous provision of goods and/or services for the one-year prior to the filing of the petition. The director noted that he had requested evidence that the petitioner had conducted business from June 1999, a year before the petition was filed, to the present. The petitioner has only provided a few invoices and bills of lading dating after 2000. As noted above, even if the petitioner had provided invoices and bills of lading on appeal to demonstrate it had been engaged in business prior to the year 2000, as such evidence had been specifically requested by the director and not provided, it would not be considered on appeal. Matter of Soriano, supra.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.