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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

File: WAC 00 121 50672

Office: CALIFORNIA SERVICE CENTER

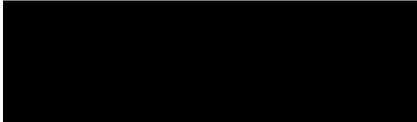
Date: **NOV 19 2002**

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:



PUBLIC COPY

INSTRUCTIONS:

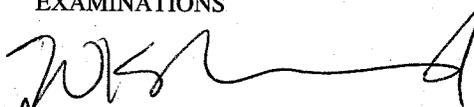
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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

The petitioner is owned by an individual and is engaged in international trucking brokerage and transportation. It seeks to employ the beneficiary as its marketing and operations director. 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 established a qualifying relationship between itself and a foreign entity. The director also determined that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner states that the petitioner is not incorporated and is owned by an individual. Counsel also states that the claimed foreign entity does not own the United States entity but that may change. Counsel further states that the beneficiary does not have a subordinate staff to relieve him from performing his current duties but that staff will be hired by the beneficiary when he comes to the United States. Counsel suggests that after the staff is hired the beneficiary's duties will mostly be executive in nature and will include some managerial duties as well.

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.

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 director set out the pertinent regulations defining an affiliate, a subsidiary, a manager, and an executive. The regulations will not be repeated here.

On appeal, counsel confirms that the petitioner is not an affiliate or subsidiary of a foreign entity and is not the same employer as the foreign entity. Neither counsel nor the petitioner has submitted any documentation or assertions that would support a contrary determination. The regulations clearly require that the petitioner establish a qualifying relationship between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company in order to qualify for this visa classification. Neither counsel nor the petitioner identifies any erroneous conclusion of law or statement of fact made by the director on this issue. The petitioner has presented no evidence or argument that would overcome the director's determination. The petitioner has not established a qualifying relationship with a foreign entity.

Counsel also confirms the director's determination that the beneficiary will not be acting in a managerial or executive capacity for the petitioner. Counsel indicates that at least initially the beneficiary will be performing non-qualifying duties. However, the proposed position to be held by the beneficiary must be executive or managerial in nature upon the filing of the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45,49 (Comm. 1971). Again, neither counsel nor the petitioner identifies an erroneous conclusion of law or statement of fact made by the director. The petitioner has not presented evidence or arguments that would overcome the director's determination on this issue. The petitioner has not established that the beneficiary will be employed in a primarily executive or managerial capacity or that the position would be an executive or managerial position.

Inasmuch as counsel does not identify specifically 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.