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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

APR 18 2003

File: WAC 02 025 57265 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner purports to be a corporation organized in the State of Nevada in October 1998. It is engaged in the food catering business. It seeks to employ the beneficiary as its president and 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 established that the beneficiary had been or would be employed in a primarily managerial or executive capacity for the petitioner.

The regulation at 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 appeal, counsel for the petitioner submits photographs of the petitioning business, documents allegedly showing the contribution of funds to start the organization, the petitioner's Internal Revenue Service (IRS) Form 1120-A, U.S. Corporation Short-Form Income Tax Return for 2001, the petitioner's payroll totals for June 2002, and a statement by the beneficiary indicating that a general manager has been hired and that five administrative employees were hired in June 2002. On the Form I-290B Notice of Appeal, counsel states that most of the evidence requested had already been supplied.

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.

Counsel does not identify any erroneous conclusion of law or statement of fact on appeal. The photographs of the business do not demonstrate that the beneficiary is performing an assignment in an executive or managerial capacity. The documents allegedly showing the contribution of funds to start the organization are not relevant to the issue of the beneficiary's managerial or executive capacity. The IRS Form 1120-A does not address the issue of the beneficiary's duties for the petitioner. The petitioner's payroll records for employees apparently hired in June 2002 are not relevant to the beneficiary's eligibility for this classification at the time the petition was filed. 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). Likewise, the beneficiary's statement that a general manager has been hired is not sufficient to demonstrate the duties of the beneficiary at the time the petition was filed would have been executive or managerial duties.

The evidence submitted on appeal does not address or is not pertinent to the issue of the beneficiary's managerial or executive capacity. Inasmuch 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.

Of further note, the record is also deficient in establishing a qualifying relationship between the petitioner and the beneficiary's foreign employer. *See* 8 C.F.R. § 204.5(j)(2). The record contains no information on the beneficiary's duties for the foreign employer and whether these duties were in a managerial or executive capacity. *See* section 101(a)(44) of the Act and 8 C.F.R. § 204.5(j)(3)(i). The record does not contain sufficient information regarding the petitioner's ability to pay the beneficiary the proffered wage. *See* 8 C.F.R § 204.5(g)(2). Furthermore, the record does not contain evidence that the petitioner had been doing business in a systematic, continuous, and regular way for one-year prior to filing the petition. *See* 8 C.F.R. § 204.5(j)(2) and 8 C.F.R. § 204.5(j)(3)(i)(D).

Finally, the record contains numerous documents that are either totally untranslated or are accompanied by a summary translation. The regulation at 8 C.F.R. § 103.2(b)(3) requires any document containing foreign language to be accompanied by a full English translation that has been certified by a competent translator.

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, not only has the burden not

been met, counsel on appeal has failed to submit any cogent information regarding the director's decision.

ORDER: The appeal is summarily dismissed.