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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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HOAAO/ULLB 3rd Fl.

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

MAR 13 2003

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

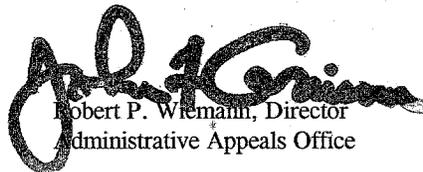
INSTRUCTIONS:

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 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner is a limited liability company established in January 2001 in the State of Washington. It is engaged in seafood processing and transportation. It seeks to employ the beneficiary as its general manager. Accordingly, it 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 it had been doing business for one year prior to filing the petition. The director also determined that the petitioner had not established that the beneficiary had been or would be employed in a managerial or executive capacity for the United States petitioner. The director further determined that the petitioner had not established its ability to pay the beneficiary the proffered wage of \$40,000 per year.

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 the Form I-290B Notice of Appeal, filed on March 25, 2002, the petitioner indicated that a separate brief or evidence would be submitted within thirty days.

The statement on the appeal form reads simply:

According to the first issue: [REDACTED] which is [REDACTED] parent company has been doing business in the United States for 7 years.

According to the second issue: As soon as [REDACTED] start business, at least need two more employee [sic].

According to the last issue: Because [REDACTED] didn't start any business until I get the visa which means the working permit of the United States Immigration office, I do not have salary. [sic]

The petitioner subsequently submitted a letter stating again that its parent company had been doing business in the United States for a number of years. The petitioner added that the reason the petitioner was established was because the parent company had been doing business in the United States. The petitioner also added that it was advertising for additional employees and had bought office equipment. The petitioner indicated that, once the

beneficiary's visa was approved, the petitioner's business could be started up quickly. The petitioner finally stated that the beneficiary was the only son of the president of the parent company and that the beneficiary did not currently need a salary. The petitioner also submitted information showing that its parent company had participated in a seafood show in 2002.

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.

Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

(i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

The petitioner's statements and evidence on appeal do not address the deficiencies in the record as detailed in the director's decision. Rather, the petitioner's statements confirm that the petitioner's parent company was engaged in doing business in the United States and that the petitioner was in the process of starting up a business. This employment-based visa classification requires that the petitioner (not the parent company) have been engaged in doing business for one year prior to filing the petition. See 8 C.F.R. 204.5(j)(3)(i)(D). The petitioner's statements also appear to confirm that it has not yet hired sufficient employees to relieve the beneficiary from performing non-qualifying duties. 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). 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 Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Finally, the petitioner's statements confirm that the beneficiary has not received a salary. Moreover, the record contains no independent evidence that the petitioner, rather than the petitioner's parent company, could pay the beneficiary the proffered wage. See 8 C.F.R. § 204.5(g)(2). The petitioner has not provided evidence of legally binding agreements between a foreign entity and the petitioner requiring that the foreign entity pay the beneficiary's proffered wage.

The petitioner does not identify any errors made by the Bureau in making its decision. Inasmuch as the petitioner 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.