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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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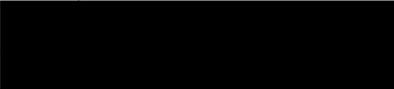
File: WAC 99 134 54488

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 17 2003

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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

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 Administrative Appeals Office (AAO) dismissed the subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a corporation organized in the State of California in 1994. It is engaged in the management and operation of motels. It seeks to employ the beneficiary as its president. 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 would be employed in a primarily managerial or executive capacity. The AAO affirmed the director's decision on appeal.

On motion to reopen and reconsider, counsel for the petitioner asserts that the beneficiary qualifies as a multinational manager because he was hired to work as the president of the United States subsidiary. Counsel submits a brief in support of his assertion. Counsel does not submit any new facts to address the grounds of the AAO's dismissal.

In pertinent part, 8 C.F.R. § 103.5(a)(2) states: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Furthermore, 8 C.F.R. § 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel asserts that the AAO did not review the entire record including financial statements, purchase invoices, and bank statements. Counsel asserts that these documents provide a context for the beneficiary's job duties relating to his coordination of functions and operations between divisions and departments. Counsel does not provide further information to support this assertion. Counsel's assertions alone 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). Moreover, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden

of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). A review of a petitioner's bank statements, purchase invoices, and financial statements does not contribute to a conclusion that the beneficiary qualifies as a multinational executive or manager. Counsel cites no precedent decisions requiring a contrary conclusion.

Counsel also asserts that the AAO did not consider that the beneficiary managed an essential function. However, counsel simply concludes, "[B]ased on the financial growth that will be [sic] a direct result of opening the U.S. entity, it is evident that the Alien is involved in the management of an essential function of the organization." Counsel's assertion, again, is not supported by documentary evidence describing the "essential function" nor evidence of how the beneficiary manages the "essential function" rather than performing non-qualifying duties relating to the "essential function." 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).

Counsel further asserts that the beneficiary has authority to execute or recommend personnel actions and has the authority to engage in all personnel matters. Counsel does not discuss how this authority requires a finding of eligibility for the beneficiary under this visa classification. The AAO notes, however, that a petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definitions rather than relying on only one of the elements found in the definitions. Counsel also fails to address how the AAO's decision was flawed in determining that the record did not support a conclusion that the beneficiary supervised managerial, supervisory, or professional employees.

Counsel finally asserts that the dismissal places too much weight on the number of employees hired by the petitioner. However, counsel does not address the petitioner's failure to provide comprehensive position descriptions for its four employees. Based on the lack of information regarding the duties of the petitioner's employees, including the beneficiary's duties, it is not possible for the AAO to conclude that the beneficiary would be relieved from primarily performing non-qualifying duties. Counsel does not cite precedent decisions establishing that the AAO's decision was based on an incorrect application of law or Service policy.

Counsel does not address the deficiencies of the record as found

by the AAO on appeal and does not adequately state reasons for reconsideration of this petition. Counsel does not cite any precedent decisions in support of a motion to reconsider indicating that the previous decisions were based on an incorrect application of law or Service policy.

It should be noted for the record that, unless the Bureau directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.