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

**B4**

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



File: WAC 02 126 50670

Office: CALIFORNIA SERVICE CENTER

Date:

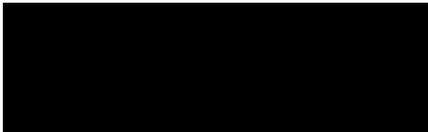
IN RE: Petitioner:  
Beneficiary:



**NOV 20 2003**

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:



**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 (CIS) 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 is an organization established in the State of California in 1997. It is a Filipino restaurant and cargo business. It seeks to employ the beneficiary as its vice-president of operations. 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 managerial or executive capacity.

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.

Counsel for the petitioner submitted Form I-290B Notice of Appeal, received by CIS on October 21, 2002. Counsel indicated that she would be sending a brief and/or evidence within 30 days. To date, more than one year later, CIS has not received a brief or other evidence in support of the petitioner's appeal. The Form I-290B states:

Petitioner, Hapag Kainan Restaurant, Inc. filed an I-140 Immigrant Petition for Alien Worker on behalf [of the beneficiary] seeking classification as a multinational executive and manager under 8 CFR 204.5(j)(2). [CIS] denied the I-140 Petition on the basis that the Petitioner has not sufficiently established that the Beneficiary has been or will be employed in an executive or managerial capacity. Petitioner contends that [CIS] failed to properly consider and evaluate the evidence presented in support of the petition, and that it has sufficiently shown that the beneficiary, who has been residing in the United States as a multinational executive and manager pursuant to an L-1A non-immigrant visa, will be primarily employed as an executive and manager. Petitioner therefore requests that the denial be overturned and approved.

Counsel does not specifically identify an erroneous conclusion of law or statement of fact as a basis for the appeal. Counsel's reference to a previously approved nonimmigrant petition does not contribute to a finding of eligibility for this visa classification. Each petition must be approvable on the basis of

the evidence submitted. As established in numerous decisions, CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6<sup>th</sup> Cir. 1987), cert. denied, 485 U.S. 1008 (1988); *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (BIA 1988). If the previous nonimmigrant petitions were approved based on the same evidence contained in the current record, the approval would constitute clear and gross error on the part of CIS. It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Counsel does not identify the facts the director purportedly failed to consider. 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.