

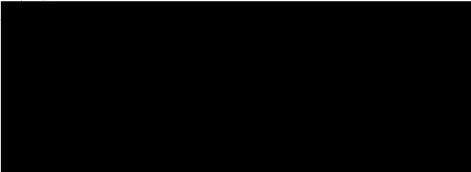
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U.S. Department of Homeland Security
Citizenship and Immigration Services

B4

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



File: WAC 02 051 54329 Office: CALIFORNIA SERVICE CENTER Date:

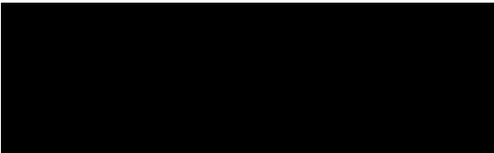
NOV 21 2003

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:



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 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

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 a corporation organized in 1993 in the State of California. It is engaged in importing and selling gemstones and diamonds. It seeks to employ the beneficiary as its president and chief executive officer. 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 the beneficiary had been or would be employed in a managerial or executive capacity for the petitioner. The director also determined that the petitioner had not established that the beneficiary had been employed in an executive or managerial position for a qualifying foreign entity prior to entering the United States as a non-immigrant. The director further determined that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

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 a Notice of Appeal, Form I-290B that was received by CIS on August 7, 2002. Counsel stated that he would be sending a brief and/or evidence to the AAO within 30 days. To date, more than one year later, the AAO has not received a brief or other evidence in support of the petitioner's appeal. The I-290B states:

The alien beneficiary is a multinational executive as per the definition of Section 203(b)(1)(C) of the Immigration and Nationality Act. He is in the United States and has been admitted to the USA as an L-1A [intracompany transferee]. He has been in L-1A status for more than 5 years. His L-1A has been issued and extended. Documentation to prove the existence of the L-1A intracompany transfer relationship between the US subsidiary and the foreign parent company has been submitted not only with the I-129 processing on 3 different occasions but also with the instant package. The alien beneficiary is performing managerial responsibilities. The company has 8 employees. Documentation to verify each and every point has been submitted. The alien beneficiary is eligible [sic] for

classification under Section 203(b)(1)(C) of the Immigration Act.

Counsel for the petitioner references previously approved L-1A, intracompany transferee petitions for this beneficiary. The director's decision, however, does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. The record of proceeding does not contain copies of the visa petitions that counsel claims were previously approved. However, 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. 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). 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's assertion that the beneficiary performs managerial duties is not sufficient. The assertions of counsel 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, the director has considered the petitioner's number of employees and the beneficiary's role for the petitioner in his decision. Neither counsel nor the petitioner specifies any erroneous conclusion of law or statement of fact purportedly made by the director. Inasmuch as the basis for the appeal is not specifically delineated, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is summarily dismissed.