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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
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Washington, DC 20536

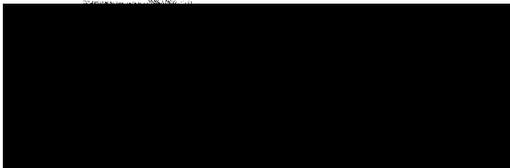


File: WAC 02 121 53346 Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2003

IN RE: Petitioner: [Redacted]  
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:



**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, 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 claims to be a corporation organized in 1997 in the State of California. It is engaged in import, export, and trade. It seeks to employ the beneficiary as its president and 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 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 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 [CIS] decision was wrong when it concluded that a major subsidiary of the largest textile company in Shaanxi Province of China did not need ANY executives or managers to head its California office. [CIS] erred when it assumed, without any evidence, that the President and Manager of this office would be engaged in the performance of non-executive/managerial duties. The Decision was wrong when it stated that an individual can only be a "Manager" when the employees managed are professionals. The [CIS] decision does not reflect a correct understanding of the current state of BIA, [CIS] or AAU precedent decision [sic] regarding intracompany transferees. The decision is a boilerplate decision that does not reflect an individualized analysis of the facts of this petition.

Counsel's statements on the Form I-290B do not address the petitioner's failure to establish a qualifying relationship with the beneficiary's foreign employer. The director's analysis of the deficiencies of the record on the issue of qualifying relationship

is in-depth and does not reflect a "boilerplate" decision. Inasmuch as the basis for an appeal on the issue of the petitioner's qualifying relationship with the beneficiary's foreign employer is not delineated, the regulations mandate the summary dismissal of the appeal.

Counsel's assertions that the director incorrectly evaluated the evidence regarding the beneficiary's claimed managerial or executive capacity are not persuasive. 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). The AAO acknowledges the director could have more articulately stated his determinations and conclusions. However, the director correctly notes the petitioner's description of the beneficiary's duties is vague and general. It is not possible to discern from the description provided that the beneficiary's assignment was or would have been primarily managerial or executive. 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).

The director's determination that the petitioner failed to establish the organizational complexity of the petitioner is based on the record. The petitioner does not provide independent documentation substantiating the organizational structure outlined on its organizational chart. The petitioner has not sufficiently established that an organization with three "managers," and two part-time salespeople could serve the reasonable needs of the petitioner without the beneficiary performing a majority of the company's operational tasks. The record does not substantiate that, when the petition was filed, the petitioner employed contractors. 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).

Counsel is correct that managerial capacity encompasses more than managing professionals. In this matter, however, the petitioner has not established through adequate descriptions and documentary evidence that the beneficiary has or would supervise and control the work of other supervisory, managerial, or professional employees or has fulfilled the other elements of the definition of managerial capacity. See section 101(a)(44)(A) of the Act.

Inasmuch as counsel fails to identify specifically any erroneous conclusion of law or statement of fact regarding the director's determination that the petitioner failed to establish a qualifying relationship, the appeal will be summarily dismissed. In addition,

counsel's brief statements on the Form I-290B regarding the beneficiary's purported managerial or executive capacity are not sufficient to overcome the director's determination on the issue.

**ORDER:** The appeal is summarily dismissed.