

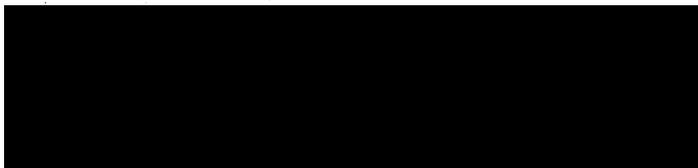
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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

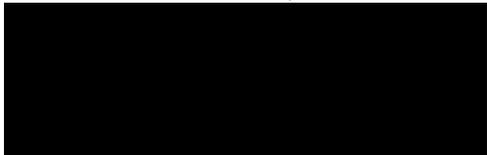


File: WAC 01 245 54211 Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2003

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 is a corporation organized in December 2000 in the State of California. It produces a full line of golf recreational equipment sold throughout Japan, North and South America, and Europe. It seeks to employ the beneficiary as its marketing 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 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 July 1, 2002. Counsel stated that she 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 decision to deny the above petition is based solely on the fact that the Beneficiary is ineligible for the classification of Marketing Manager because the four employees supervised by her are not professionals.

Staffing levels of subordinate employees is only one factor to be considered and should not be dispositive when determining the managerial capacity of the Beneficiary. Had there been an indication in the RFE that the evidence requested was necessary to determine the Beneficiary's eligibility to qualify as a manager based on the management of individuals, the Petitioner (or its counsel) would have made it clear that the position of Marketing Manager is that of a "functional manager". As such, it is the management of a function of of [sic] the organization, not the management of staff that determined the eligibility for the classification of manager.

Counsel's claim that the director's decision is based solely on the beneficiary's supervision of non-professionals is inaccurate.

In particular, the director evaluated the beneficiary's duties as a whole. Moreover, the record does not support counsel's assertion that the marketing manager position is a functional manager position. 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). If the petitioner is claiming that the beneficiary manages an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, as well as, establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive description of the beneficiary's duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the 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). In this matter, the petitioner did not provide evidence that the beneficiary managed or would manage an essential function.

Neither counsel nor the petitioner sufficiently specifies any erroneous conclusion of law or statement of fact purportedly made by the director. Further, neither counsel nor the petitioner presents evidence to document counsel's claim that the beneficiary manages an essential function. Inasmuch as the basis for the appeal is not specifically delineated or documented, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is summarily dismissed.