

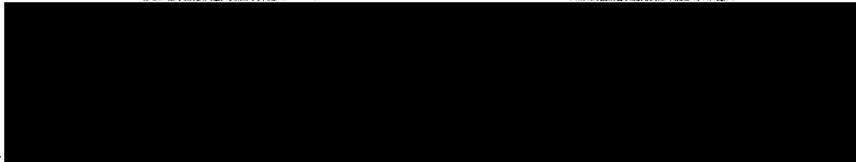
PUBLIC COPY

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

B4

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



NOV 21 2003

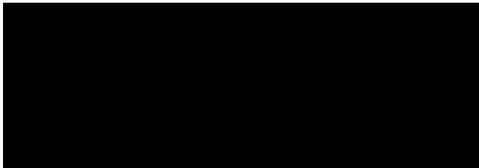
File: WAC 01 276 52955 Office: CALIFORNIA SERVICE CENTER Date:

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, 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 on appeal. The appeal will be dismissed.

The petitioner claims to be a corporation organized in 1996 in the State of California. It is engaged in the import and export of aerosol and non-aerosol and home and personal care products. 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.

Counsel for the petitioner submitted a Notice of Appeal, Form I-290B that appeared to have been filed untimely. The director notified the petitioner that the appeal was untimely and that the information on the Form I-290B did not meet the requirements of a motion to reopen or reconsider and was rejected. Counsel for the petitioner requested reconsideration of the decision and provided evidence that the Form I-290B had been mailed and delivered timely.

Counsel also notified the AAO that as soon as the director made his decision on the motion to reconsider, and assuming the director reinstated the appeal, a brief would be forwarded to the AAO. The director reopened his decision to reject the appeal on March 14, 2003. The director determined, on the same date, that the petitioner had provided sufficient evidence to overcome the decision to reject the appeal as untimely and indicated that the appeal had been forwarded to the AAO.

The AAO has received no further evidence or brief from the petitioner or petitioner's counsel. Counsel's assertions on the Form I-290B read:

The Decision of [CIS] erred on several points. It erred when it stated that non-payroll employees cannot be considered to be under the supervisory control of a General Manager. It erred when it misunderstood the company['s] organizational chart and mischaracterized the office of President, filled by the beneficiary, as being that of a General Manager. It erred in its definition of a manager as being a person who must (and can only) supervise professionals; this has never been the law. The beneficiary is the President of the petitioning company and is the person responsible for managing all of the functions of the company. [CIS] erred by not reading the extensive documentation that explained this in detail.

Counsel's assertions regarding the beneficiary's managerial or executive capacity and errors allegedly made by the director when making the decision 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's determination that the petitioner failed to establish sufficient organizational complexity 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 the staff on hand when the petition was filed could serve the reasonable needs of the petitioner without the beneficiary contributing to the performance of a majority of the operational tasks of the company. Additionally, the record does not substantiate the employment of independent contractors when the petition was filed. 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 just 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 executive or managerial capacity. See section 101(a)(44)(A) and (B) of the Act.

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 decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.