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U.S. Citizenship and Immigration Services

[redacted]

JUN 1 8 2004

File: WAC 02 284 53652 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a company organized in the State of California in August 1994. It claims to be an international trading company. It seeks to employ the beneficiary as its operations manager. 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 for the United States entity. 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 CIS received March 25, 2003. Counsel indicated that it would send a brief and/or evidence to the AAO within 30 days. To date, more than 11 months later, the AAO has not received a brief or other evidence in support of the petitioner's appeal. The I-290B states:

> (1) The Decision of the Center Director is premised upon an erroneous interpretation and understanding of the definitions of manager and executive in concluding (a) that the petitioner could not require the services of a manager or executive and (b) that the beneficiary was not acting in the capacity of a manager or executive.
>
> (2) The Decision erroneously concluded that no qualifying relationship existed for visa classification under section 203(b)(1)(C) of the Immigration and Nationality Act due to the Director's incomplete and incorrect understanding of contract, corporate, and tax law governing the sufficiency of consideration, issuance of corporate shares, and corporate organization, control, and governance.
>
> (3) The Center Director acted in an ultra vires manner by arbitrarily and capriciously requiring a degree of proof above and beyond the standard of preponderance of evidence[.]

Counsel does not specifically identify an erroneous conclusion of law or statement of fact. 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, regarding counsel's first assertion, the director properly determined that the petitioner's description of the beneficiary's duties did not sufficiently describe a position that would be managerial or executive.

Regarding counsel's second assertion, the director may request such other evidence as the director may deem necessary. 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, CIS may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership

was acquired. Evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. In this matter, the record contains documents that present inconsistent information regarding the petitioner's actual ownership and control. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner did not submit evidence clarifying the inconsistencies.

Finally, counsel submits no evidence that the director acted arbitrarily or capriciously in requiring that the petitioner establish eligibility for the benefit sought. Counsel does not specify any erroneous conclusion of law or statement of fact made by the director on either the issue of the beneficiary's managerial or executive capacity or the issue of qualifying relationship. 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.