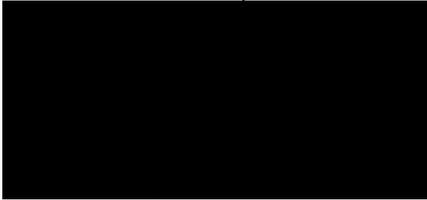


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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

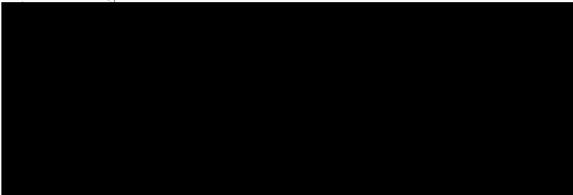


FILE: WAC 02 161 50610 Office: CALIFORNIA SERVICE CENTER Date: NOV 04 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

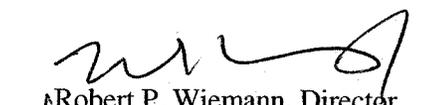
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The Director, California Service Center, denied the employment-based visa petition. On October 31, 2003, the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the matter will be reopened for entry of a new decision. The decision denying the petition will be affirmed.

The petitioner is a corporation organized in the State of California in February 2001. It exports general merchandise. It seeks to employ the beneficiary as its president. 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 petitioner. The AAO affirmed the director's decision and also determined that the petitioner had not submitted sufficient evidence to establish: (1) that it had been doing business for one year prior to filing the petition on April 5, 2002; or (2) its ability to pay the beneficiary the proffered annual wage of \$60,000.

On motion, counsel for the petitioner acknowledges that the job description initially submitted for the beneficiary is correct. Counsel asserts that since filing the petition the petitioner has expanded significantly. Counsel submits sworn declarations from the beneficiary and the petitioner's office manager describing the beneficiary's duties now that the petitioner has grown in size. Counsel claims that the new duties and the increase in the petitioner's number of employees comprise new facts and show that the beneficiary's position is an executive position. Counsel also provides a sample purchase contract dated one year and fifteen days prior to filing the petition and urges that this document be considered evidence that the petitioner was actively doing business one year prior to filing the petition. Finally, counsel submits: (1) the petitioner's 2002 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, showing that the beneficiary had been paid \$40,000; and (2) a statement from the petitioner's parent company that it had paid the beneficiary \$20,000 in the year 2002. Counsel asserts that this new evidence shows that the petitioner has paid the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Counsel has submitted only one document, the petitioner's 2002 IRS Form 1120, that could be considered new and relevant to this proceeding. As stated in the AAO's prior decision, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner's revised description of the beneficiary's duties and the information regarding the increase in the petitioner's number of employees since the petition was filed do not establish the beneficiary's eligibility for this visa classification when the petition was filed. Moreover, the AAO notes that even if the description of the beneficiary's duties was considered, the description is vague and nonspecific and simply paraphrases portions of the definitions of both managerial and executive capacity. See sections 101(a)(44)(A)(iii) and (iv) and 101(a)(44)(B)(ii) and (iv) of the Act.

Similarly, the petitioner's sample purchase contract submitted on motion cannot be considered new evidence under 8 C.F.R. § 103.5(a)(2). The sample purchase contract was previously available and could have been presented in the previous proceeding. Moreover, one purchase contract purportedly entered into one year and fifteen days before the petition was filed is not evidence that the petitioner was doing business in a regular, continuous, and systematic fashion for the year prior to filing the petition. The AAO notes again that the petitioner affirmatively acknowledged that it had been active for only three quarters prior to filing the petition.

The petitioner's one new relevant document, its 2002 IRS Form 1120, establishes only that the petitioner paid the beneficiary \$40,000 for the year 2002 and had a net income of \$13,555. These two sums taken together are reasonably close to the proffered wage and are sufficient to establish that the petitioner could have paid the proffered wage to the beneficiary in the year 2002. Of note, the foreign entity's compensation of the beneficiary does not establish the *petitioner's* ability to pay the proffered wage. On this issue alone, the petitioner has provided sufficient evidence on motion to overcome the AAO's previous decision. The AAO's decision will be withdrawn on this issue.

Finally, it should be noted for the record that, unless Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. *See* 8 C.F.R. § 103.5(a)(1)(iv).

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, the petitioner has not provided relevant new evidence on the issue of the beneficiary's managerial or executive capacity for the petitioner or on the issue of doing business for one year prior to filing the petition. The record does not contain sufficient evidence to overcome the previous decision on these issues.

**ORDER:** The decision of the AAO is withdrawn on the issue of the petitioner's ability to pay the beneficiary the proffered wage. The decision of the AAO is affirmed on the issue of the beneficiary's managerial and executive capacity for the United States petitioner and on the issue of the petitioner's failure to establish that it was doing business for one year prior to filing the petition.