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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:



Office: CALIFORNIA SERVICE CENTER

Date: **OCT 01 2004**

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 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 corporation organized in the State of California in July 1999. It provides software and network systems and creates and maintains web sites. It seeks to employ the beneficiary as its software and computer engineer. 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 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."

On the Form I-290B, Notice of Appeal, filed on August 13, 2003, counsel for the petitioner indicated that a brief and/or evidence would be sent to the AAO within 30 days. To date, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The attachment to the Form I-290B reads:

- A. The beneficiary will be employed in an executive capacity due to the fact that his primary duties will be to:
  1. Direct the management of the organization; and
  2. Establish the goals and polices [sic] of the organization.
- B. The beneficiary will be employed in an executive capacity in that he will exercise wide latitude in discretionary decision-making.
- C. The beneficiary will be employed in an executive capacity in that he will receive minimal supervision or direction from higher[-]level executives, Board of Directors, or Stockholders of the organization.
- D. The beneficiary will be employed in a managerial capacity in that he will manage the organization.
- E. The beneficiary will be employed in a managerial capacity in that he will supervise and control the work of other professionals.
- F. The beneficiary will be employed in a managerial capacity in that he will manage essential functions within the organization.
- G. The beneficiary will be employed in a managerial capacity in that he will have direct authority to hire, fire, and /or promote employees.
- H. The beneficiary will be employed in a managerial capacity in that he will exercise complete discretion over day-to-day operations of the activities and functions of employees.

Counsel's re-statement of the statutory criteria for an executive and a manager does not address the director's grounds for denial. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Moreover, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Inasmuch as counsel does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

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 summarily dismissed.