

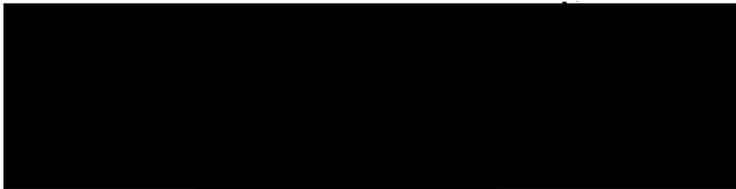
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U.S. Department of Homeland Security  
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Washington, DC 20529



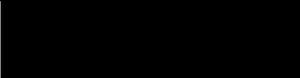
U.S. Citizenship  
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FILE:



Office: TEXAS SERVICE CENTER

Date: **AUG 08 2005**

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IN RE:

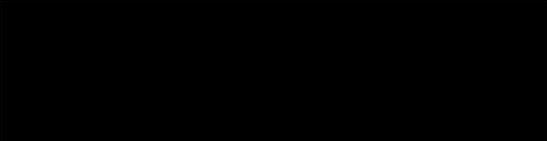
Petitioner:

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

**DECISION:** The Director, Texas 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 filed the instant petition seeking to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Texas that is engaged in the engineering of industrial control systems. The petitioner seeks to employ the beneficiary as its project manager.

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director determined that the beneficiary would be functioning as a hybrid "executive/manager," and concluded that he would not exercise wide latitude in discretionary decision-making, nor would he function at a senior level in the organization.

On the Form I-290B appeal, counsel claims:

1. Mistake in Law: The examining officer misapplied the findings of CSC January 15, 2003, to the instant case.
2. Mistake in Law: The examining officer only utilized a portion of 8 C.F.R. § 214.2(l)(1)(ii)(B)(3) here as a full reading of the law necessarily brings a different outcome.
3. Mistake in Fact: The examining officer inaccurately analyzed and categorized the Beneficiary's job description resulting in an incorrect decision.
4. Mistake in Fact: The examining officer, based on his inaccurate interpretation of the company's organization chart, incorrectly concludes that the beneficiary does not function as [sic] a senior level.
5. Mistake in Fact: The examining officer incorrectly states that the beneficiary does not appear to exercise wide latitude in discretionary decision-making.
6. Other issues to be developed upon further review of the record.

The instant appeal was filed on December 17, 2004. Although counsel indicates that a brief would be submitted within thirty days, counsel did not indicate why the brief would be submitted late or otherwise provide good cause for the requested extension. As of this date, the record does not contain a supplemental appellate brief.<sup>1</sup> Regardless, pursuant to 8 C.F.R. § 103.3(a)(2)(vii), counsel's request for additional time to submit a brief is denied as a matter of discretion for failure to show good cause. Accordingly, the record will be considered complete.

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<sup>1</sup> On July 5, 2005, the AAO sent to counsel by facsimile a request for the brief and/or additional evidence on appeal. The AAO provided counsel five days within which to respond. Counsel failed to respond to the request.

To establish eligibility under section 203(b)(1)(C) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to continue rendering his or her services to the same United States employer or a subsidiary or affiliate thereof in a managerial or executive capacity.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

As counsel did not identify on appeal a specific erroneous conclusion of law or statement of fact, the appeal will be summarily dismissed. Although counsel lists a series of "mistakes" purportedly made by the director, counsel's broad assertions fail to overcome the decision of the director. Counsel's suggestion of two "mistakes in law" do not specify which "findings" the director allegedly misapplied. Additionally, counsel referenced the incorrect regulations, applicable to nonimmigrant petitions rather than immigrant visa regulations. Moreover, counsel's claims of "mistakes in fact" do not address how the director erred in her analysis of the record. Counsel's blanket assertions merely disagreeing with the director's decision are not sufficient. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes that the record is deficient in substantiating the claim that the beneficiary would be employed in a primarily managerial or executive capacity. The beneficiary's proposed job description provided by the petitioner in its January 30, 2003 letter includes non-managerial and non-executive responsibilities, such as functioning as the "main company representative" to customers, "evaluat[ing] customer needs," "prepar[ing] technical and commercial offers," and "execut[ing] project billing." 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). Additionally, the petitioner has not demonstrated that the beneficiary would be relieved of performing the non-qualifying job duties of the business. While the petitioner supplied an organizational chart identifying the beneficiary as the project manager, the beneficiary's subordinate employees are not clearly identified. Moreover, the petitioner does not provide an explanation as to the job duties to be performed by the lower-level employees so as to ensure the beneficiary's employment in a primarily managerial or executive capacity.

As a result, the AAO cannot conclude that the beneficiary would be employed in a primarily qualifying capacity.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained this burden. Therefore, the appeal will be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.