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



U.S. Citizenship
and Immigration
Services

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BY

FILE: [REDACTED]
EAC 98 119 54429

Office: CALIFORNIA SERVICE CENTER

Date: FEB 07 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

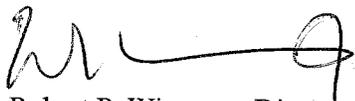
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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

DISCUSSION: The preference visa petition was approved in August 1998. On February 19, 2003 the Director, California Service Center, revoked approval of the visa petition. The matter came before the Administrative Appeals Office (AAO) on appeal, which was dismissed in a decision dated November 21, 2003. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a California business engaged in international trade. It seeks to employ the beneficiary as its executive vice-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 failed to establish that the beneficiary had been and would be employed in a managerial or executive capacity. The director also determined that the petitioner does not have the ability to pay the beneficiary's proffered annual wage of \$31,200.

The petitioner appealed the denial disputing the director's findings. The AAO restated the petitioner's descriptions of the beneficiary's job duties, analyzed the petitioner's claimed hierarchical structure, and discussed the petitioner's various tax information. Based on the petitioner's submissions, the AAO noted that the petitioner failed to submit sufficient position descriptions for the beneficiary and his subordinates and concluded that the petitioner lacked a sufficient support staff to allow the beneficiary to primarily perform managerial or executive duties. The AAO also determined that the petitioner must establish its ability to pay the beneficiary's proffered wage at the time the petition is filed, not when the beneficiary's adjustment application is approved. Accordingly, the AAO concluded, based on the relevant tax documentation on record, that the petitioner lacked sufficient funds to pay the beneficiary's salary.

On motion to reopen, counsel submits a brief describing the nature of the petitioner's business and the general job duties of the beneficiary. Counsel also questions CIS's reliance on the size of the petitioner's staff in determining the beneficiary's eligibility for classification as an L-1A manager or executive. In regard to the petitioner's ability to pay the beneficiary's proffered wage, counsel asserts that a portion of that salary was provided by the parent entity. While counsel's claim suggests that the beneficiary was compensated his total proffered wage, he clearly states that the petitioner is incapable of providing that entire amount on its own, without the assistance of the foreign entity. However, the regulation at 8 C.F.R. § 204.5(g)(2) specifically requires the petitioner to demonstrate its own ability to compensate the beneficiary. Showing that another entity, aside from the petitioner itself, is contributing to the beneficiary's proffered wage does not satisfy the petitioner's regulatory requirement.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that 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.

In the instant case, the petitioner has had its opportunity to describe the beneficiary's job duties and organizational structure. Therefore, the additional description of duties cannot be considered as new facts sufficient to meet the requirements of a motion to reopen pursuant to the above regulation. Although the petitioner had not previously revealed the foreign entity's role in contributing to the beneficiary's salary, this cannot be considered new evidence merely because the petitioner chose not to reveal this information prior to filing its motion.

The petitioner's submissions do not meet the requirements for a motion to reopen. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

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 sustained that burden.

ORDER: The motion is dismissed.