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U.S. Citizenship
and Immigration
Services

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BY
JAN 11 2005



FILE: EAC 02 060 50120 Office: VERMONT SERVICE CENTER Date:

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 Director, Vermont Service Center, denied the employment-based visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal on July 16, 2003. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a limited liability company organized in the State of Connecticut in October 1999. It operates a liquor store. It seeks to employ the beneficiary as its 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: (1) that the record did not establish that the petitioner had been doing business; or, (2) that the beneficiary had been or would be employed in a managerial or executive capacity. The AAO withdrew the director's determination on the issue of the petitioner doing business. The AAO affirmed the director's decision on the issue of the beneficiary's managerial or executive capacity and also found that the record did not establish a qualifying relationship between the United States entity and a foreign entity.

On motion, counsel for the petitioner restates the statutory definitions of executive and managerial capacity and asserts that the beneficiary is an executive. Counsel also asserts that the beneficiary manages an essential function within the organization. Counsel notes that the AAO in the past has considered the economic value of the function. Counsel also provides descriptions of the duties of two of the petitioner's employees. Counsel claims that it was the petitioner's intent to purchase a Subway franchise under its name but that the franchiser required that a new entity be set up to hold the franchise. Counsel attaches checks to demonstrate that the beneficiary paid for the Subway franchise. Finally counsel contends that the beneficiary has owned a majority interest in the foreign entity since April 2000 and submits copies of the foreign entity's financial statements in support of his contention.

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."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel has not submitted any new evidence relevant to this proceeding. The description of duties of two of the petitioner's employees is not new evidence and is not sufficient to establish that the beneficiary is a manager or an executive. The beneficiary's payment for a Subway franchise is not relevant to this proceeding. As the AAO previously determined, a separate and distinct limited liability company owns the Subway franchise, not the petitioner. Further, the beneficiary's purchase of a partial interest in the Subway franchise does not sufficiently establish that the petitioner owns and controls the Subway franchise or that the

beneficiary is a manager or an executive. Finally, counsel's submission of the foreign entity's financial statements does not address the critical issue of control of the foreign entity. As the AAO previously observed, the foreign partnership agreement does not set out the rights and limitations of each of its "working partners."

Counsel's assertion that the beneficiary is an executive and manages an essential function is not supported by new evidence or pertinent precedent decisions that the previous decisions were based on an incorrect application of law or policy. 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). Moreover, the AAO observes that neither on appeal or motion has the petitioner identified the essential function allegedly managed by the beneficiary. Neither has the petitioner articulated the essential nature of the function, or established the proportion of the beneficiary's daily duties attributed to managing the essential function.

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).

The petitioner has not provided any relevant new evidence and has not supported any reasons for reconsideration of the AAO decision in this matter. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.