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FILE: [REDACTED]
EAC 03 101 51640

Office: VERMONT SERVICE CENTER

Date: JUN 10 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 denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.¹

The petitioner is a New York corporation that is engaged in the business of dealing in diamonds, gems, and other jewelry. It seeks to employ the beneficiary as its president and managing partner. 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 and denied the petition. Specifically, the director acknowledged the petitioner's response to the request for additional evidence (RFE) and cited the various phrases used by the petitioner to describe the beneficiary's general responsibilities. However, the director concluded that the information provided lacked sufficient detail to enable Citizenship and Immigration Services (CIS) to determine exactly what duties the beneficiary would perform on a day-to-day basis and the nature of those duties. The director also found that the petitioner, at the time the petition was filed, lacked a sufficient support staff to relieve the beneficiary from having to perform nonqualifying tasks.

On appeal, counsel generally disputes the director's findings claiming that the petitioner complied with the director's request for additional evidence. In support of this claim the petitioner resubmitted its response to the RFE. However, counsel failed to specifically address any of the director's objections.

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.

Additionally, the petitioner submitted a statement from its accountant disclosing the salaries of the petitioner's employees for 2004. However, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Thus, the petitioner's employee salaries for 2004 are not

¹ In response to the director's Request for Evidence, the beneficiary submitted a signed affidavit in which he states that he had no knowledge of the I-360 filed on his behalf by the Faith Dynamics Center and its pastor. According to Siskind's Immigration Bulletin, [REDACTED] was charged in 2000 by the District Attorney in Brooklyn, New York with "defrauding hundreds of immigrants." Siskind's Immigration Bulletin, *News Bytes*, <http://www.visalaw.Com/00sep3/11sep300.htm> (Spet. 15, 2000). In addition, an investigative report by [REDACTED] a graduate student at Columbia University, indicates that, in the Faith Dynamics cases investigated [REDACTED] required payment up front before he would file an application on behalf of someone. See [REDACTED] *Buyer Beware*, <http://www.jrn.columbia.edu/studentwork/investigative/2001/fraud.shtml> (accessed May 25, 2005). If this were the normal modus operandi for [REDACTED] it would bring into question the truth of the beneficiary's claims regarding the I-360 filed on his behalf. Moreover, it would also appear that [REDACTED] was motivated by money to file the I-360's and not because he was a "very unstable person" as the beneficiary claims. Finally, if it were determined that the beneficiary paid [REDACTED] to file the I-360 on his behalf, the beneficiary could be found to have been complicit in submitting a fraud-based I-360 to CIS, knowing he was a Hindu with "little knowledge of Christianity and no interest or ability to work for a Christian church," as claimed in his affidavit.

relevant for the purpose of establishing the petitioner's eligibility as of January 24, 2003, the date the petition was filed.

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 that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.