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U.S. Citizenship
and Immigration
Services

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[Redacted]

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JUN 20 2005

FILE: [Redacted]
LIN 04 177 51696

Office: NEBRASKA 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:

[Redacted]

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, Nebraska Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is an organization established in June 1987 in the State of Ohio. It manufactures rubber automobile components. 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.

On October 22, 2004, the director determined that the petitioner had not established that the beneficiary's position for the foreign entity in one of the three years prior to entering the United States as a nonimmigrant was a managerial or executive position.

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 November 22, 2004, counsel for the petitioner indicated that a separate brief or evidence would not be submitted. Counsel submits a letter in support of the appeal.

The statement on the Form I-290B reads:

The supporting documentation submitted with the petition and in response to the Service's Request for Evidence clearly demonstrated the dates and nature of [the beneficiary's] employment in various managerial positions at the petitioner's foreign parent. The Service's denial is therefore a misapplication of law.

Counsel, in the November 19, 2004 letter in support of the appeal, again asserted that the initial documentation and the additional information submitted in response to the director's request for evidence established that the beneficiary had at least one year of employment in a managerial or executive capacity with the foreign parent within three years of the beneficiary's entry into the United States.

In the October 22, 2004 decision, the director specifically identified the generalities contained in the petitioner and counsel's description of the beneficiary's duties for the foreign entity. When examining the executive or managerial capacity of the beneficiary, Citizenship and Immigration Services will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not

spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). On appeal, neither counsel nor the petitioner further clarifies the beneficiary's actual duties for the foreign entity or explains how the beneficiary's duties are managerial or executive. Contrary to counsel's assertion, the record does not establish that the beneficiary performed the high level responsibilities that are specified in the managerial or executive definition. 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 Obaighena*, 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).

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. The unsupported 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 at 503.

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.