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JUN 20 2005

FILE: WAC 01 154 51264 Office: CALIFORNIA SERVICE CENTER Date:

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: SELF-REPRESENTED

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, California Service Center. 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 granted. However, the AAO's prior decision dismissing the appeal will be affirmed.

The petitioner is a California business engaged in the manufacture and export of pesticides. It claims to be a subsidiary of [REDACTED] located in China. It seeks to employ the beneficiary as its managing director. 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 has been and would be employed in a managerial or executive capacity. The director also concluded that the petitioner failed to establish its ability to pay the beneficiary's proffered wage.

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 additional evidence submitted in response to the director's request, and reviewed the petitioner's various tax information. The AAO concluded that the petitioner failed to submit sufficient evidence to show that it has a sufficient support staff to allow the beneficiary to primarily perform managerial or executive duties. The AAO also affirmed the director's conclusion regarding the petitioner's inability to pay the beneficiary's proffered wage.

On motion, the petitioner submits a statement discussing the progress it has made in terms of getting the Environmental Protection Agency (EPA) to approve the petitioner's insecticide and in registering the trademark for its product. The petitioner also submits a number of documents regarding the petitioner's efforts to get its product trademarked and ready for mass production and, eventually, selling the product in various markets. However, the EPA documents, newspaper articles, and financial documents submitted in support of the motion all reflect events that took place after March 29, 2001, the date the petition was filed. However, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, any events that occurred after the petition was filed are irrelevant in the instant matter. The petitioner has not submitted any evidence suggesting that the beneficiary was eligible to be classified as a multinational manager or executive as of the filing date of the petition.

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 decision dismissing the appeal is affirmed.