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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
WAC 96 188 52302

Office: CALIFORNIA SERVICE CENTER

Date: MAY 10 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

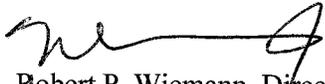
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[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, California Service Center, initially approved the employment-based immigrant visa petition. Upon subsequent review, the director issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The director's decision to revoke approval of the petition was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a company organized in December 1992 in the State of California. It imports and exports electronic products and Asian foods. It seeks to employ the beneficiary as its general manager. 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 it was owned and controlled by the foreign entity as required. The AAO observed inconsistencies in the petitioner's documentation and determined that the petitioner had not provided evidence that the foreign entity capitalized the petitioner and had not documented an affiliate relationship with the foreign entity. The AAO also observed that the record depicted the beneficiary performing the operational and administrative tasks of the petitioner and determined that the record did not substantiate that the beneficiary would be performing primarily managerial or executive tasks. The AAO further noted that the petitioner had not established that the beneficiary's duties for the foreign entity had been managerial or executive or that the foreign entity continued to do business, thus maintaining the multinational characteristic required for this visa classification.

On motion dated November 6, 2003, counsel for the petitioner asserts that the AAO erred when determining the beneficiary's duties for the petitioner would not be executive. Counsel argues that the beneficiary conducts negotiations at an executive level and that signing company documents such as bills of lading, customs documents, and letters of credit are activities that should be considered executive. Counsel contends that the beneficiary supervises an individual who Citizenship and Immigration Services (CIS) has recognized as a manager and submits an April 24, 2001 letter confirming the petitioner's employment of this individual, as well as 1998 and 1999 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement issued to this individual. Counsel also argues that the beneficiary is a function manager and cites unpublished matters in support of this argument.

Counsel contends that the petitioner's stock certificates issued to the foreign employer demonstrate the petitioner's subsidiary relationship with the foreign employer. Counsel claims that wire receipts showing that the petitioner was capitalized with funds from the beneficiary's personal account and from a third party sufficiently demonstrates the actual relationship between the petitioner and the foreign employer. Counsel acknowledges the discrepancy between the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, and the funds allegedly used to capitalize the petitioner. Counsel claims that capitalization funds were transferred to the petitioner in the form of cash, in an amount sufficient to cure the discrepancy. Counsel also submits a October 27, 2003 letter from the petitioner's accountant, in which the accountant indicates that "[b]ased on the assertions of the [beneficiary]" the foreign entity owns the petitioner 100 percent.

Counsel's argument that the beneficiary's duties are executive or that the beneficiary is a function manager is not supported by pertinent precedent decision. As referenced above, 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. at 188-89 n.6; *Matter of Ramirez-Sanchez*, 17 I&N at 503. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel does not provide new facts supported by affidavits or other documentary evidence and does not cite any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy. Counsel also fails to address the issues raised in the AAO's decision concerning the petitioner's failure to establish that the beneficiary's duties for the foreign entity had been managerial or executive or that the foreign entity continued to do business, thus maintaining the multinational characteristic required for this visa classification.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). For the additional reasons cited, the petition cannot be approved.

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 motion is dismissed.