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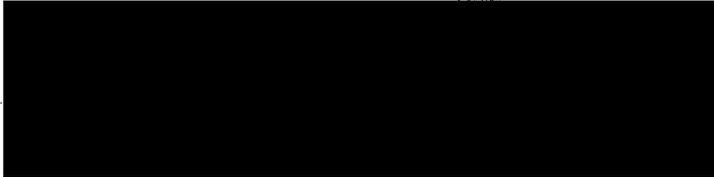
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 11 2005
WAC 02 222 53637

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, California Service Center, denied the preference immigrant visa petition. The petitioner subsequently appealed that decision to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner was incorporated in October 1991 in the state of California and is engaged in import and wholesale of furniture and accessories. It seeks to employ the beneficiary as its business 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 concluded that the record lacked evidence that the beneficiary would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal, specifically addressing the evidence submitted by the petitioner and explaining why the petition could not be approved.

On motion, counsel submits a statement asserting that the beneficiary's services are crucial to establishing the petitioner's business on the east coast. Counsel also states that the beneficiary's direct involvement in the petitioner's daily operational tasks is necessary because the east coast business is still in its early stage of development.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that 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.

In the instant case, counsel's implication that the petitioner's east coast location will support a managerial or executive position is primarily based on events that occurred after the petition was filed. However, eligibility must be established at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The fact that the petitioner hired additional staff and expanded its operations after the petition was filed are not probative of the petitioner's eligibility as of the filing date. Counsel's assertion of such facts does not satisfy the requirement under 8 C.F.R. § 103.5(a)(2) to state new facts that have a bearing on the instant matter. Further, the apparent implication in counsel's motion is that the beneficiary was not primarily performing managerial or executive duties at the time the petition was filed because the new business location where the beneficiary was meant to work was still in its initial stage of development. However, the fact that the beneficiary's presence was necessary for the petitioner's business to progress does not overcome the director's objections. Therefore, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

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 motion is dismissed.