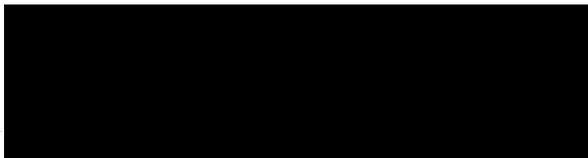


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U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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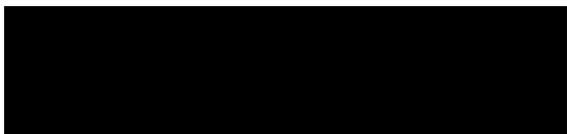
FILE: 
SRC 03 065 52592

Office: TEXAS SERVICE CENTER Date: NOV 10 2005

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:



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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner was established in 2001 in the state of Texas.¹ The petitioner is engaged in retail, trade, and investment and 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 January 12, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. The director repeated all of the petitioner's statements describing the beneficiary's proposed duties in the United States and determined that the descriptions lacked the necessary detail to convey a comprehensive understanding of what the beneficiary would be doing on a daily basis and what portion of the beneficiary's overall tasks would be of a qualifying nature.

The director also considered the petitioner's staffing levels in light of its overall purpose and stage of development and determined that the beneficiary would be employed as a firstline supervisor, not a manager or executive overseeing the work of managerial, supervisory, or professional employees.

Although counsel provided an appellate brief on behalf of the petitioner, it was generally non-responsive to the director's concerns regarding the beneficiary's position and consisted primarily of counsel's repeated statements disagreeing with the director's overall conclusion. Despite the director's detailed analysis explaining the specific reasons for denying the petition, counsel focused primarily on the petitioner's earnings and number of employees failing to provide additional information regarding the beneficiary's proposed duties on a daily basis.

Furthermore, counsel claims that at the time the petition was filed, the petitioner was grossing nearly one million dollars and had a staff of ten employees. Contrary to this claim, Part 5 of the petitioner's Form I-140 clearly shows that the petitioner had only five employees and was grossing \$150,000 annually, a small fraction of the figure claimed by counsel on appeal. Counsel's uncorroborated statements and complete disregard for the claims put forth by the petitioner give rise to serious doubts regarding counsel's own credibility. 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 Dec. 503 (BIA 1980).

Counsel also noted that Citizenship and Immigration Services (CIS) approved two Form I-129 nonimmigrant petitions that had been previously filed on behalf of the beneficiary. However, the director's decision does not indicate whether she reviewed the prior approvals of the nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the

¹ It should be noted that, according to the Texas Comptroller of Public Accounts, the petitioner is not currently in good standing in Texas due to its failure to satisfy all state tax requirements. Therefore, regardless of whether the petitioner's tax issues in Texas can be easily remedied or not, it raises the critical issue of the company's existence as a legal entity in the United States.

director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Finally, counsel assumes that the director's focus on only one factor of the petitioner's ineligibility is an indicator that, but for the ground addressed in the denial, the petitioner is otherwise eligible for the benefit sought. However, there is no law, regulation, or precedent decision to support counsel's erroneous assumption. 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).

In fact, the director's failure to address the issue of the beneficiary's employment abroad is a mere oversight and should not be interpreted as an indication that the petitioner satisfied the requirements discussed in 8 C.F.R. §§ 204.5(j)(3)(B) and (D). Beyond the director's decision, the petitioner failed to submit an adequate description of the beneficiary's duties during his employment abroad, thereby precluding the AAO from determining what the beneficiary did on a day-to-day basis and whether such daily activities were primarily of a qualifying nature. When examining the executive or managerial capacity of the beneficiary, the AAO 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).

Furthermore, the only evidence provided to establish the existence of a qualifying relationship between the U.S. petitioner and the beneficiary's foreign employer is a single stock certificate. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

As previously stated, the fact that neither of the above issues was addressed in the director's decision does not preclude the AAO from discussing these issues in the instant proceeding and including each as an

independent and alternative basis for the dismissal of the appeal and the denial of the petition. *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.

Finally, 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.

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.