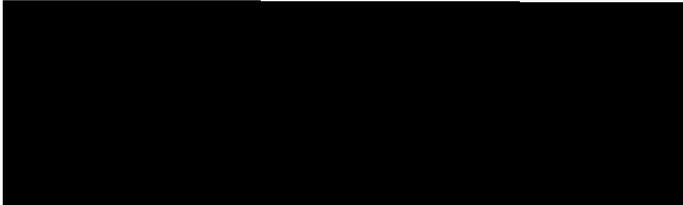


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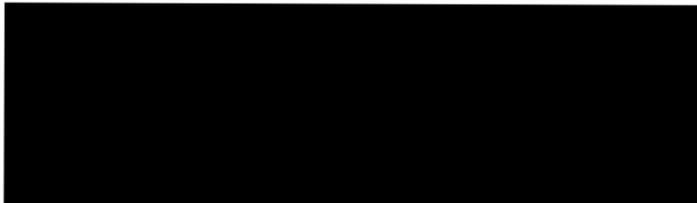
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File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 03 2006
WAC 05 029 53632

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 employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a corporation organized in the State of California in March 2000. It claims to manufacture, import, and wholesale rugs. It seeks to employ the beneficiary as its 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 denied the petition September 22, 2005, determining that the petitioner had not established that: (1) the beneficiary would be employed in a managerial or executive capacity for the United States entity; or (2) a qualifying relationship existed between the petitioner the beneficiary's foreign employer.

On the Form I-290B Notice of Appeal, filed October 27, 2005,¹ counsel for the petitioner indicated that a brief and/or evidence would be submitted within 30 days. On February 23, 2006, the AAO contacted counsel by facsimile to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. Counsel has not responded to the request as of this date. Accordingly, the record will be considered complete. The statement on the Form I-290B reads:

The director denied the Form I 140, Petition for a Immigrant Petition [sic] for Alien Worker, as an intra-company transferee stating that petitioner has not established that beneficiary is an executive or a manager. The Director also found that there was no qualifying relationship between Petitioner and the Beneficiary. Both of the arguments are erroneous because first, the record will show that Beneficiary's duties comply with the definition of a manager as well as an executive pursuant to the previsions [sic] of 8 C.F.R. and secondly, Petitioner is a subsidiary of the mother company. This has been fully documented but the Service has failed to fully comprehend. An appeal brief will follow in 30 days as from this notice.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

¹ The notice of decision denying the petitioner's Form I-140 petition is dated September 22, 2005. The record of proceeding also contains a notice of decision denying the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status which references the "September 30, 2005" denial of the underlying Form I-140, Immigrant Petition for Alien Worker. Due to the inconsistencies regarding the actual decision date of the Form I-140, the AAO will not reject this appeal as untimely. See 8 C.F.R § 103.3(a)(2)(i).

- (C) **Certain Multinational Executives and Managers.** -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

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." Counsel's reiteration of the director's decision and assertion that the arguments are erroneous are insufficient as a basis for 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 Dec. 503 (BIA 1980).

Inasmuch as the petitioner 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.