

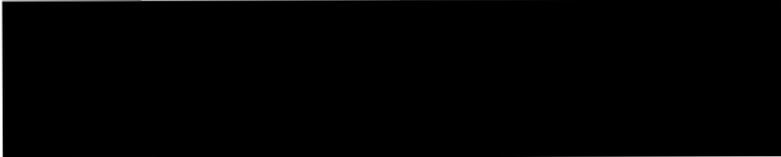
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U.S. Department of Homeland Security
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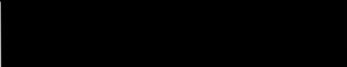
U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

FEB 01 2007

SRC 05 144 51648

IN RE:

Petitioner:

Beneficiary:



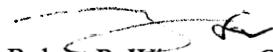
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO) where the appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a Florida corporation engaged in the business of providing travel services to travel agencies. It seeks to employ the beneficiary as its president and chief executive officer. 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.

In a decision dated June 23, 2005, the director denied the petition based on three independent grounds of ineligibility: (1) the beneficiary was not employed by the foreign entity in a primarily managerial or executive capacity; (2) the beneficiary would not be employed by the United States entity in a primarily managerial or executive capacity; and (3) a qualifying relationship did not exist between the foreign and United States entities at the time of filing. The director properly discussed the petitioner's failure to provide the previously requested time allocations for the beneficiary's specific daily job duties and observed that the record lacks documentation establishing that the petitioner was equipped with a sufficient support staff able to relieve the beneficiary from having to primarily perform non-qualifying daily operational tasks at the time the Form I-140 was filed.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal, affirming all three grounds for ineligibility as cited in the director's decision. In its discussion, the AAO restated the procedural history of this matter and specifically recited job descriptions and other statements provided by the petitioner and its counsel. The AAO noted an inconsistency in the petitioner's claim regarding the beneficiary's employment capacity, pointing out that the beneficiary was referred to by two different job titles, one job title suggesting employment in an executive capacity and the other suggesting employment in a managerial capacity. The AAO also discussed the petitioner's provision of a broad list of the beneficiary's job responsibilities in lieu of a detailed list of the beneficiary's specific daily job duties, which were requested by the director. The AAO properly concluded that the petitioner failed to provide sufficient information and supporting evidence to establish that the beneficiary's duties would primarily be within a qualifying capacity and that the petitioner itself was adequately staffed with employees and/or independent contractors who would readily relieve the beneficiary from having to primarily engage in daily operational tasks. The petitioner's failure to address the beneficiary's employment abroad was also properly noted.

With regard to the third ground for denial of the petition and subsequent dismissal of the appeal, the AAO stated that the petitioner failed to provide evidence to reconcile the information reflected in its stock certificate and its 2003 and 2004 tax returns.

On motion, counsel summarizes the AAO's three grounds for dismissing the appeal and provides information regarding the beneficiary's position abroad. However, as with the job description regarding the beneficiary's proposed employment in the United States, counsel's description of the beneficiary's foreign employment consists of general job responsibilities rather than specific duties. 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). Moreover, the petitioner's failure to address on appeal the issue of the beneficiary's duties abroad precludes the petitioner from revisiting this

issue on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

With regard to the beneficiary's proposed employment with the U.S. petitioner, counsel again clarifies the nature of the petitioner's business, despite the AAO's clear indication that the clarification had been previously noted and accepted, and briefly discusses the beneficiary's involvement in all aspects of the petitioner's operations. Counsel also repeats the claim that the beneficiary is responsible for personnel management and submits a new organizational chart showing the additions to the company's personnel structure without any documentation to show when each of the employees was hired or to corroborate that the employees were, in fact, hired as claimed. As stated in the AAO's prior decision, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

With regard to the issue of the petitioner's claimed qualifying relationship with the beneficiary's foreign employer, the petitioner resubmits stock certificate no. 1, which identifies the foreign entity as the owner of 51 shares of the petitioner, and submits stock certificate no. 2 identifying the beneficiary as the owner of the remaining 49 of the petitioner's issued shares. The petitioner also provides amended tax returns for 2003 and 2004 to reflect the foreign entity's alleged 51% ownership of the petitioner. It is noted, however, that like a delayed birth certificate, the amended tax returns filed years after the claimed transaction and after the original tax returns have been brought into question raise serious doubts regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Counsel asks that all of the most recent submissions provided on motion be considered and that the matter of the AAO's prior dismissal of the appeal be reopened and reconsidered.

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.

The regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In the present matter, neither the additional information regarding the beneficiary's foreign and U.S. employment nor the documentation regarding the petitioner's ownership, which has been provided by counsel on motion, can be deemed "new," as these submissions were previously available and could have been

provided on appeal. As such, the AAO concludes that the petitioner failed to meet the regulatory requirements of a motion to reopen.

With regard to the motion to reconsider, the AAO finds that the petitioner failed to submit argument or pertinent precedent decisions establishing that the prior decision was based on an incorrect application of law or Service policy or that the decision was incorrect based on the evidence of record at the time of the initial decision.

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.