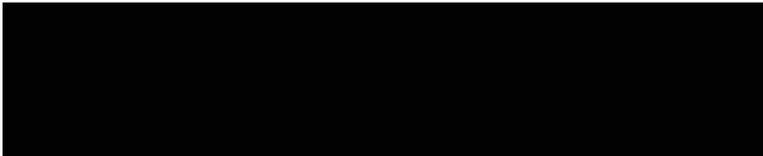




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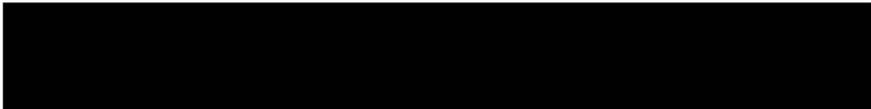
Date:

JUL 06 2007

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 Director, Vermont Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of New York that is engaged in the import, export and sale of books and magazines. The petitioner seeks to employ the beneficiary as its manager.

The director denied the petition concluding that the petitioner had failed to demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On Form I-290B, Notice of Appeal, filed on September 29, 2006, counsel contends:

The applicant was able to show that she will be employed on [sic] a managerial position. The statute was not intended to limit managers to a person who supervises a large number of individuals. A person may be a manager under the regulations, especially if he is the sole employee of the company where she utilizes outside independent contractor[s] or where business is complex. She may be a 'functional manager'. *Matter of Irish Dairy Board, Ltd.*, case no. A28 845 421 (AAU Nov. 16, 1989); *IKEA US, Inc. v. DOJ*; INS 48 F. Supp.2d 22 (D.D.C. 1999); 9 FAM 41.54.

Counsel requests sixty days from the date of filing the appeal to submit an appellate brief.

As of this date, counsel has not submitted any additional documentation. The AAO notes that on June 4, 2007, a request was sent to counsel via facsimile for an appellate brief or additional evidence. Counsel did not respond to the AAO's request. Accordingly, the record will be considered complete.

To establish eligibility under section 203(b)(1)(C) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's brief statement on Form I-290B fails to acknowledge, much less resolve, the inadequacies that are discussed in detail in the director's denial. The record remains devoid of specific evidence requested by the director, including an organizational chart and a description of the petitioner's staffing levels on the date of filing, both of which would be relevant to determining the employment capacity of the beneficiary. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Counsel's general objections to the denial of the petition, without identifying any specific errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. 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).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

Beyond the decision of the director, the petitioner has not demonstrated the existence of a qualifying relationship between the foreign and United States entities.

In order to establish eligibility for classification as a multinational manager or executive for immigrant visa purposes, the petitioner must establish that it maintains a qualifying relationship with the beneficiary's foreign employer; the foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. § 204.5(j)(3)(i)(C). To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary"). A multinational manager or executive is one 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." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).

Despite the director's request for evidence of a qualifying relationship, the petitioner failed to submit documentation that the beneficiary's foreign employer and the United States entity enjoyed a qualifying relationship on the date of filing. In fact, the record is devoid of evidence identifying the beneficiary's foreign employer, or demonstrating its existence prior to the beneficiary's entrance into the United States as a nonimmigrant and at the time the immigrant petition was filed. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As the petitioner has not offered any evidence relating to the existence or ownership of the foreign entity, the AAO cannot determine whether a qualifying relationship existed between the foreign and United States entities. For this reason, the petition may be denied.

An additional issue not addressed by the director is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner has not offered any evidence of the capacity in which the beneficiary was employed in the foreign entity. As noted previously, the extremely limited record fails to identify the beneficiary's foreign employer or her purported employment in the overseas company. Absent documentary evidence of the specific managerial or executive tasks performed by the beneficiary in the foreign entity, the AAO cannot conclude that the beneficiary was employed by the overseas company as a manager or executive. 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 petition may be denied for this additional reason.

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 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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.