U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

identifying data deleted to prevent unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a limited liability company organized in June 1997 in the State of California. It is engaged in the cosmetic and skin care industry. It seeks to employ the beneficiary as its director of marketing and technology. 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 determined that the petitioner had not established a qualifying relationship with the beneficiary's overseas employer.

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.

On the Form I-290B Notice of Appeal, filed on July 5, 2002, counsel indicates that a separate brief or evidence will not be submitted.

The statement on the appeal form simply reads:

> The petitioning entity is an affiliate of the foreign entity because the same persons control both entities by virtue of their ownership of shares and the proxies issued by the other owners.

Counsel also submits two proxy forms appointing one shareholder as proxy holder for an additional 33.34 percent interest in the limited liability company. The additional 33.34 percent increased the shareholder's interest to 75 percent interest in the limited liability company. The proxy forms are dated July 3, 2002, more than one year after the petition was filed. The shareholder with the additional proxy interest holds a 70 percent interest in the parent company of the beneficiary's foreign employer.

As stated in the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Counsel has not properly addressed the reasons stated for denial and has provided evidence created some time after the petition was filed to establish an affiliate relationship. *See* 8 C.F.R. § 204.5(j)(2) for pertinent definitions of affiliate and subsidiary. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at

a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner did not have a qualifying relationship with the beneficiary's overseas employer at the time the petition was filed.

Counsel does not identify any errors made by the director in making his decision. Inasmuch as counsel 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.

ORDER: The appeal is summarily dismissed.