**U.S. Department of Homeland Security**
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

**U.S. Citizenship and Immigration Services**

B4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 1 6 2004

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]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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**DISCUSSION**: The director denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a California corporation that seeks to employ the beneficiary as its engineering manager. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because: (1) no qualifying relationship exists between the petitioner and the beneficiary's foreign employer; (2) the beneficiary was not employed in a managerial or executive capacity by a qualifying foreign entity; and (3) the proffered position in the United States is not in an executive or managerial capacity.

On appeal, counsel submits a brief and copies of documents already included in the record.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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):

* * *

(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.

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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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 an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it: (1) is affiliated with HPC Philippines; (2) manufactures computer components for intra-office networking; and (3) employs 35 persons, including the beneficiary who is currently occupying the proffered position as an intracompany transferee (L-1A). The petitioner is seeking to employ the beneficiary permanently at an undisclosed salary.

The I-140 petition that is the subject of this decision is the third immigrant petition filed on behalf of this beneficiary. In March 1996, the director approved an I-140 petition for this beneficiary that was filed by HPC Hong Kong. The current petitioner, PCA Electronics, Inc. – USA, became a successor-in-interest to HPC

Hong Kong in 1997 and, therefore, the petitioner filed an immigrant petition on the beneficiary's behalf to reflect that the beneficiary's employment sponsor had changed. The director approved the petition in September 1997; however, based upon information received from an overseas investigation, the director revoked the petition's approval in September 2001. According to the director, the foreign entity, HPC Philippines, had ceased to do business in 1992 and, therefore, the petitioner could not establish that it had a qualifying relationship with the beneficiary's foreign employer.

The petitioner filed the current I-140 petition in September 2002. On March 17, 2003, the director issued to the petitioner a Notice of Intent to Deny (NOID). In this NOID, the director stated that it did not appear that a qualifying relationship existed between the petitioner and the beneficiary's foreign employer, or that the beneficiary's foreign and proposed U.S. positions were in a managerial or executive capacity. The director requested specific evidence from the petitioner and stated, "Petitioner is afforded thirty (30) days from the date of this notice to submit additional information, evidence or arguments to support the petition. Failure to respond to this request will result in the denial of the petition."

On April 17, 2003, the petitioner's former counsel faxed to the director a letter requesting "a brief extension of time" to respond to the NOID. On May 28, 2003, the director denied the petition. In the denial letter, the director acknowledged his receipt of counsel's April 17, 2003 letter and stated, "as of this date the petitioner has not submitted additional evidence to overcome the [NOID]." The director denied the petition for the reasons stated in the NOID because the petitioner failed to submit the requested evidence.

On appeal, counsel states that the denial "is in violation of due process and an abuse of discretion." Counsel states that the director failed to provide the petitioner with adequate time to respond to the NOID, and that the director failed to respond to her letter requesting additional time. Regarding the director's conclusion that the beneficiary's foreign and U.S. positions were not in a managerial or executive capacity, counsel states that Citizenship and Immigration Services (CIS) had already decided these issues favorably when it approved the beneficiary's L-1 classification and the two immigrant petitions that were filed on the beneficiary's behalf. Regarding the relationship between the petitioner and HPC Philippines, counsel states that HPC Philippines has been operating as Ramatek since 1992 and is still an operational business.

Counsel's evidence on appeal is insufficient to overcome the director's decision to deny the petition. Although counsel requested additional time to respond to the director's NOID, the director is under no obligation to grant such a request. *See* 8 C.F.R. 103.2(b)(8). In fact, the director stated specifically in the NOID, "Failure to respond to this request will result in the denial of the petition." The director was also under no obligation to inform the petitioner's counsel whether her request for additional time was granted. The director did not deny the petition until five weeks after counsel faxed her letter to the director; this five-week period was more than enough time for counsel to submit the requested evidence, particularly considering that counsel requested just "a *brief* extension of time" to respond to the NOID. [Emphasis added.]

Counsel relies upon the prior approval of an L-1 petition and two immigrant petitions as the proof that the beneficiary's foreign and U.S. positions meet the definition of managerial or executive capacity. The director's decision implies that he reviewed the prior approvals of the immigrant petitions, but not the nonimmigrant petition. The director's revocation of the previous immigrant petition is an acknowledgement that the

approval constituted material and gross error on his part. Accordingly, counsel cannot now rely upon any prior approval as evidence of the beneficiary's employment in a managerial or executive capacity, or that the petitioner and HPC Philippines maintain a qualifying relationship. 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).

On appeal, counsel specifically addresses the director's conclusion that the petitioner and HPC Philippines are not affiliated because HPC ceased doing business in 1992. Counsel maintains that HPC Philippines changed its name to Ramatek in 1992 and resubmits copies of documents that reflect the name change. However, the evidence is deficient because the petitioner has not submitted any documentation to establish that the foreign entity is a viable business concern. The documents in the record only show the existence of a corporation as of 1992; there is no contemporary evidence that the corporation was doing business in the Philippines when the petition was filed. The statement by counsel that Ramatek continues to do business is not evidence and thus is 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). As neither the petitioner nor counsel presents any evidence addressing the director's concerns, the AAO will not disturb the decision to deny the petition.

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 that burden.

**ORDER:** The appeal is dismissed. The petition is denied.