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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

DEC 1 3 2004

FILE: WAC 96 170 52844 Office: CALIFORNIA SERVICE CENTER Date:

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The Director, California Service Center, revoked approval of the preference immigrant visa petition. The petitioner subsequently appealed that decision to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed.

The petitioner was incorporated in 1994 in the state of California and is claimed to be an affiliate of Yun Hua Optical Co. Ltd., located in China. The petitioner is engaged in obtaining orders for optical products. It seeks to employ the beneficiary as its vice-president. 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 revoked approval of the visa petition based on the determination that the petitioner had not established a qualifying relationship with a foreign entity. The director also concluded that the record lacked evidence that the beneficiary would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO dismissed the appeal, specifically addressing the evidence submitted by the petitioner and explaining why the petition could not be approved.

On motion, counsel submits a statement asserting that the additional evidence submitted with the motion overcomes the AAO's prior decision dismissing the appeal.

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 Service 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 regard to the issue of a qualifying relationship, counsel submits a letter, dated October 30, 2003, from Ms. Feng, who claims to have completed the petitioner's tax returns. [redacted] states that she made a mistake in Schedule L, No. 22 of the petitioner's tax returns but did not correct it because she felt it was "not a big deal." While this statement explains the discrepancy, it lacks sufficient credibility and therefore cannot be relied upon as a matter of fact. [redacted] laims to be a certified public account; yet, she failed to submit an amended tax return to the Internal Revenue Service (IRS) even though she acknowledges that erroneous information was submitted repeatedly in the petitioner's tax returns ranging from 1996 to 2001. Furthermore, none of the petitioner's tax returns suggest that they were completed by [redacted] Rather, each of the returns indicates that it was self-prepared and does not specify the individual who completed any of the tax returns.

Although counsel submits additional information regarding the beneficiary's job duties and the job duties of his subordinates, this issue was already addressed in the AAO's prior decision. There is no indication, nor does the petitioner submit evidence that suggests, that the AAO's prior analysis was factually or legally incorrect. The AAO notes that the beneficiary's devotion of time and discretionary authority are undisputed. The key issue, however, is the beneficiary's daily duties and whether those duties are primarily of a managerial or executive nature. The director and the AAO have already concluded that the record lacks sufficient evidence to determine affirmatively that the beneficiary would primarily perform qualifying duties.

The petitioner has not submitted evidence in the form of precedent case law to determine that the AAO's prior decision was erroneous. 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.