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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]

FILE: EAC 01 057 50889 Office: VERMONT SERVICE CENTER Date: DEC 13 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 preference visa petition was denied by the Director, Vermont Service Center. The matter came before the Administrative Appeals Office (AAO) on appeal, which was dismissed in a decision dated May 14, 2003. The matter is now before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a New York business engaged in the sale of gold and jewelry. It indicates that it is a subsidiary of Rajesh Exports, Ltd., located in India. 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. The director determined that the petitioner failed to establish that the beneficiary has been and would be employed in a managerial or executive capacity.

The petitioner appealed the denial disputing the director's findings. The AAO restated the petitioner's descriptions of the beneficiary's job duties, analyzed the petitioner's claimed hierarchical structure, and discussed the petitioner's various tax documents. Based on the petitioner's submissions the AAO concluded that the petitioner lacked a sufficient support staff to allow the beneficiary to primarily perform managerial or executive duties. The AAO also determined, beyond the director's decision, that the petitioner failed to submit sufficient documentation to support its claim of a qualifying relationship with Rajesh Exports, Ltd.

On motion to reopen, counsel provides an additional description of the beneficiary's duties and asks the AAO to consider the state of the U.S. economy and the contribution that can be made by foreign-owned businesses such as the petitioner's.

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.

In the instant case, a significant portion of counsel's motion is based on the additional description of the beneficiary's duties. However, a description of duties was previously submitted in response to the request for additional evidence. Therefore, the additional description of duties cannot be considered as new facts sufficient to meet the requirements of a motion to reopen pursuant to the above regulation.

The petitioner also submits a statement of revenue and expenses for the year ending December 2000, and various bank account statements for the years 2000 and 2002. However, none of these documents address the issue of the beneficiary's duties and therefore do not overcome the AAO's conclusion that the petitioner failed to submit sufficient proof to establish that the beneficiary primarily performs managerial or executive duties. As stated in the previous decision, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while a statement from the petitioner's accountant, dated June 12, 2003, suggests that the petitioner has experienced a significant increase in business in 2003, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, although the director's denial did not address the issue of whether the petitioner submitted sufficient evidence to establish that it has a qualifying relationship with a foreign entity, the AAO determined in its decision that sufficient evidence was not submitted. It is noted that 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). The petitioner did not address this additional issue on motion. As such, due to the additional grounds discussed the AAO's decision, this petition cannot be approved.

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.