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**U.S. Citizenship
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Services**

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FILE: WAC 05 144 51501 Office: CALIFORNIA SERVICE CENTER Date: **JUN 01 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference 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 was established in 1999 in the state of California. The petitioner is engaged in the business of setting up computer networks and trading computer hardware and software. It seeks to employ the beneficiary permanently as its 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 denied the petition based on two separate grounds of ineligibility: 1) the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity; and 2) the petitioner failed to provide credible, consistent evidence to establish that it has a qualifying relationship with the beneficiary's foreign employer.

Although the beneficiary submitted an appeal on behalf of the petitioner, she failed to address the first ground of ineligibility. The beneficiary primarily discusses the continued development of the petitioning organization and presents a variety of documentation showing changes that have occurred since the petitioner filed the most recent Form I-140.¹ However, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, any business ventures that took place or new employees that may have been hired after the Form I-140 was filed cannot be considered for the purpose of determining the petitioner's eligibility for the benefit sought in the instant matter. Thus, if the record shows that the petitioner's organization consisted of four employees at the time the Form I-140 was filed, the petitioner has the burden of establishing that the beneficiary would have been performing primarily managerial or executive duties based on the organizational composition it had in place at that time. None of the statements made by the beneficiary on appeal suggest that the petitioner had such a capability.

Furthermore, while the beneficiary acknowledges the director's adverse findings with regard to documentation concerning its ownership, merely disputing such findings and claiming that the inconsistencies were the result of an attorney's error does not amount to the independent objective evidence that is necessary to resolve the significant discrepancies discussed in the denial. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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 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.

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. Inasmuch as the petitioner has failed to identify

¹ In the addendum to the petitioner's Form I-140, the petitioner admitted to filing two prior Form I-140 immigrant petitions, both of which were denied.

specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.