U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

By

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 06 2007

SRC 05 151 51286

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, Chief
Administrative Appeals Office

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

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Colorado that offers quality assessment services. The petitioner seeks to employ the beneficiary as its owner-operator.

The director denied the petition concluding that the petitioner had not established that: (1) the petitioning entity and the beneficiary's foreign employer enjoyed a qualifying relationship on the date of filing; (2) the petitioner had the ability to pay the beneficiary's annual salary of $70,000; (3) the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity; or (4) the petitioner had been doing business in the United States for at least one year prior to the instant filing.

On Form I-290B, Notice of Appeal, filed on April 7, 2006, counsel contends:

1. [Citizenship and Immigration Services (CIS)] incorrectly states 'contract or joint agreement' cannot be used to establish [a] joint venture [between the foreign and United States companies].
2. [CIS] did receive ample evidence of ability to pay with the evidence submitted in response to the [notice of intent to deny].
3. Petitioner submitted [the beneficiary's] dates of employment [in the foreign and United States entities.]

[CIS] incorrectly applied the law to the facts[.]

Counsel requests thirty days from the date of filing the appeal to submit an appellate brief.

As of this date, counsel has not submitted any additional documentation. The AAO notes that on November 30, 2006, a request was sent to counsel via facsimile for an appellate brief or additional evidence. Counsel responded via facsimile on December 12, 2006 noting that she did not file an appellate brief or evidence as indicated on the Form I-290B. Accordingly, the record will be considered complete.

To establish eligibility under section 203(b)(1)(C) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The AAO further notes that the petitioner did not demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

As noted by the director, a large portion of the record includes documentary evidence related to Orion Registrar – Eastern Region, LLC, the purported United States affiliate of the beneficiary's foreign employer. This organization has not been shown to possess any relationship with the petitioning entity, Orion Registrar, Inc. The record contains limited evidence related to petitioning entity, which would demonstrate its business operations in the United States for the requisite one-year period, its ability to pay the beneficiary's proffered annual salary, or the capacity in which the beneficiary would be employed in the United States. 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)).

As conceded by counsel, the petitioner and the beneficiary's foreign employer possess only a contractual relationship for a specific United States business venture and are not permanently related by a common owner. A contract to do business, like a licensing or franchising agreement, is not sufficient to bind the foreign and United States companies in a qualifying relationship. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual").

Counsel's brief statements on Form I-290B fail to overcome the inadequacies discussed by the director in her denial. Counsel's general objections to the denial of the petition, without identifying any specific errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are 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).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily 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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.