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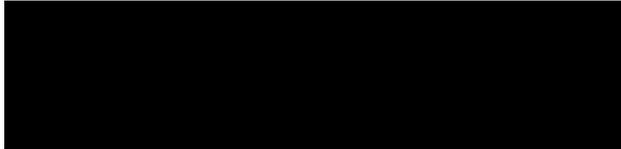
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 01 2005
SRC 05 048 52450

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Texas 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 2001 in the state of Utah and is engaged in the production and distribution of industrial art, jewelry and gift products from South American countries. It seeks to employ the beneficiary as its general manager. 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 acting director denied the petition based on the determination that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. Specifically, the acting director discussed the petitioner's response to the request for evidence (RFE) in which the petitioner indicated that the beneficiary has only recently commenced her employment in a primarily qualifying managerial or executive capacity. The acting director also voiced concern over the fact that the petitioner had a limited number of employees most of which were employed on a part-time basis at the time the petition was filed in December of 2004. The acting director specifically stated that a limited support staff suggests that the beneficiary may not be functioning in a primarily managerial or executive capacity.

Although the petitioner submitted an appeal, it was generally non-responsive to the director's concerns. The petitioner claimed that the acting director failed to consider beneficiary's prior experience in establishing a fully functioning food-based corporation in 2002. However, the petitioner's argument is irrelevant in the instant matter, as the company to which the petitioner referred was sold prior to the filing of the petition. It is noted that 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).

Furthermore, the petitioner readily admitted that after the sale of the food-based company it took time to find a new location and commence its operation. The petitioner stated that a store manager was not hired until January of 2005. However, the petition was filed in December of 2004. Thus, based on the petitioner's own admission, it was operating in a start-up stage at the time the petition was filed.

Although the petitioner provided the AAO with a copy of the support letter used in petitioning for an extension of the beneficiary's L-1A nonimmigrant visa, this letter is irrelevant in the instant proceeding in which the petitioner seeks to permanently employ the beneficiary as a multinational manager or executive. It is noted that the petition to extend the beneficiary's nonimmigrant visa was filed nearly two years prior to the filing of the instant petition. Thus, while the petitioner's circumstances at the time of the filing of the L-1A nonimmigrant petition may have warranted approval of the Form I-129, both the director and the AAO must consider the petitioner's circumstances at the time the Form I-140 was filed. Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). 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).

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or statement of fact in this proceeding, the appeal must be summarily dismissed.

Beyond the decision of the director, even if the AAO were to accept the appeal as properly filed, the AAO notes that the petitioner also failed to establish that it has a qualifying relationship with the beneficiary's foreign employer pursuant to 8 C.F.R. § 204.5(j)(3)(i)(B).

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In the instant matter, the petitioner submitted a letter dated November 29, 2004 in which it claimed to be a subsidiary of [REDACTED], located in Brazil. In support of this claim, the petitioner provided its Articles of Incorporation. Article IV of the Articles of Incorporation states that the petitioner is authorized to issue 200,000 shares of stock valued at \$1.00 per share. The petitioner also submitted three stock certificates each dated December 19, 2001. One stock certificate issued 93,100 shares to the beneficiary; another stock certificate issued 102,000 [REDACTED]; and the third stock certificate issued 4,900 shares to Abraham Jara. Thus, according to the stock certificates all 200,000 of the authorized shares were issued. Based on the value of the shares as indicated in Article IV of the Articles of Incorporation, the petitioner should have received \$200,000 in exchange for the stock. However, Schedule L, item 22(b) of the petitioner's tax return for 2003 indicates that only \$1,000 was received in exchange for the sale of common stock. Although the petitioner was instructed to submit its tax return for 2004, it failed to do so. Thus, the record remains inconsistent as to the amount of capital received in exchange for the sale of the petitioner's stock. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner

submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Due to the petitioner's failure to provide consistent information with regard to the purchase of its stock, the AAO cannot affirmatively determine that the petitioner had a qualifying relationship with [REDACTED] at the time the petition was filed.

Additionally, though also not discussed in the director's decision, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) states that the petitioner is required to submit evidence that the prospective United States employer has been doing business for at least one year.

The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

In the instant matter, the petitioner claims to be engaged in the sale of various products. However, the record lacks evidence of any sales transactions. Accordingly, the AAO cannot conclude that the petitioner was engaged in the "the regular, systematic, and continuous" sales of its products for one year prior to filing the I-140 petition.

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). Therefore, based on the two additional grounds discussed above, this petition cannot be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 counsel has failed to identify 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.