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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 02 279 54492 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2005

IN RE: Petitioner:
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:

[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

DISCUSSION: The Director, California 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 is a corporation initially organized in the State of California in June 1997. It imports and wholesales leather goods. It seeks to employ the beneficiary as its 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 determined that the petitioner had not established: (1) a qualifying relationship with the beneficiary's foreign employer; or, (2) that the beneficiary would be employed in a managerial or executive capacity for the United States entity.

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."

On the Form I-290B, Notice of Appeal, filed on October 20, 2003, counsel for the petitioner indicated that a brief and/or evidence would be sent to the AAO within 30 days. To date, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

In a statement attached to the I-290B, counsel for the petitioner states:

> The decision by the Director denying beneficiary status as a multi-national executive/manager is erroneous. The Director states that the "petitioner has not established through the submission of independent objective evidence that the beneficiary will truly be performing as a manager or executive, for immigration purposes." That statement simply ignores the fact that petitioner has sufficient other employees to handle day-to-day non-supervisory duties. Beneficiary's primary duties are executive or managerial in nature. See Commentary, 52 Fed. Reg. 5738,5739 (Feb. 26, 1987).
>
> The Director states that "[f]or immigration purposes, the issuance of a piece of paper titled 'stock certificate' is not conclusory as to whether a qualifying relationship exists between a petitioner and a foreign company. No cite is provided for this statement. Yet California law is quite clear. The face of the stock certificate is evidence of the ownership of the shares represented by it. California Corporations Code, Section 133.

Counsel for the petitioner does not address the director's determinations that: (1) the beneficiary's job description did not establish that the beneficiary performed primarily in an executive capacity; (2) the petitioner employed only the beneficiary and an office manager full-time and two employees part-time and that it was reasonable to believe that with the petitioner's organizational structure, the beneficiary would assist with the day-to-day non-supervisory duties; (3) the beneficiary did not qualify as a manager because his

position would not be over subordinate managers or professional employees; and, (4) the beneficiary would be performing routine operational duties rather than managing a function of the business.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although inarticulately stated the director determined that the record did not support the petitioner's representations that its reasonable needs might plausibly be met by the services of the beneficiary as president, an office manager and two part-time employees. Counsel, on appeal, does not specifically explain and support the implied assertion that the beneficiary is relieved from performing primarily non-qualifying duties.

In addition, counsel does not address the director's determination that the petitioner has not established ownership and control of the U.S. entity. The regulations specifically allow the director to request additional evidence in appropriate cases. *See* C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest. In this matter, the director identified inconsistencies and embellishments in the record. Neither counsel nor the petitioner have clarified the inconsistencies or explained the embellished statements. If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Inasmuch as counsel's statements on appeal do not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal; the regulations mandate the summary dismissal of 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. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.