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U.S. Citizenship  
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Services

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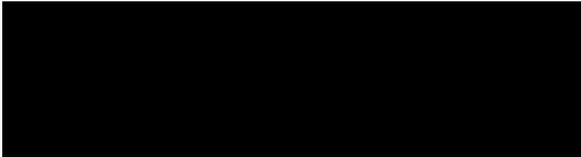


FILE: SRC 03 073 52011 Office: TEXAS SERVICE CENTER Date: JUL 14 2005

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

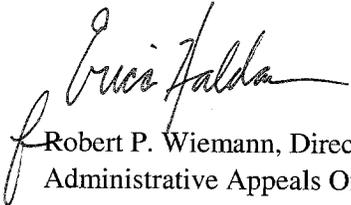
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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, 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 states that it is operating as an import and export company. It seeks to employ the beneficiary as its operations manager, pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary has been or would be employed by the United States entity in a primarily managerial or executive capacity.

On the Form I-290B appeal, counsel asserts:

The record viewed in its [sic] totality does in fact demonstrate that the Beneficiary will be employed in a primarily managerial or executive capacity. Beneficiary's primary assignment has been and/or will be primarily directing or supervising a subordinate staff within the meaning of *Matter of Church Scientology International*, 19 I&N Dec. 593 [(Comm. 1988)].

The instant appeal was filed on April 24, 2004. Although counsel indicates that a brief would be submitted within thirty days, counsel did not indicate why the brief would be submitted late or otherwise provide good cause for the requested extension. As of this date, the record does not contain a supplemental appellate brief. Regardless, pursuant to 8 C.F.R. § 103.3(a)(2)(vii), counsel's request for additional time to submit a brief is denied as a matter of discretion for failure to show good cause.

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 continue rendering his or her services to the same United States employer or a subsidiary or affiliate thereof in a managerial or executive capacity.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for his classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Although counsel references *Matter of Church Scientology*, counsel does not specifically identify why the director's denial is erroneous based on the Commissioner's decision. The AAO cannot be expected to review and determine how the facts of the instant case are analogous to those in *Matter of Church Scientology*. Counsel is obligated to specifically state how that decision is controlling.

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.

The AAO notes that the record is deficient in substantiating the claim that the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner indicated on the petition and an appended letter, dated December 20, 2002, that the beneficiary would be employed as its operations manager, during which he would perform exclusively in a managerial capacity. The petitioner's claim to employ the beneficiary in a primarily managerial capacity is undermined by the beneficiary's responsibility of negotiating contracts for the company, communicating with suppliers, and "handl[ing]" the company's administration and finances. While the petitioner provided an allocation of how the beneficiary would spend his time, these non-qualifying job duties were not included. Therefore, the amount of time the beneficiary would devote to performing non-managerial and non-executive functions of the company cannot be determined. The petitioner must prove that the beneficiary *primarily* performs high-level responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, the petitioner has not demonstrated that it employs a staff sufficient to relieve the beneficiary from performing the non-qualifying functions of the organization. While the petitioner noted in its February 11, 2004 letter that the beneficiary would supervise a sales director and purchase and shipping supervisor, neither individual is identified as an employee on the petitioner's organizational chart. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Additionally, the record does not contain evidence that either worker is employed in a professional, managerial or supervisory position. See 8 C.F.R. § 204.5(j)(2). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner has not demonstrated that the beneficiary manages professional, managerial or supervisory employees.

Furthermore, counsel's blanket statement on appeal that the beneficiary would be supervising a subordinate staff within the meaning of *Matter of Church of Scientology*, 19 I&N Dec. 593 (Comm. 1988), is not persuasive. Counsel's unsupported claim and unexplained referenced to this matter are not sufficient to overcome the director's well-founded and logical conclusions based upon review of the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

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 this burden. Therefore, the appeal will be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.