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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 061 55994 Office: CALIFORNIA SERVICE CENTER Date: JUL 18 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 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 Arizona and is engaged in financial and real estate investment. It seeks to employ the beneficiary as its president and 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 the determination that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity.

On September 16, 2004, counsel, on behalf of the petitioner, filed an appeal disputing the director's findings. Counsel states that Citizenship and Immigration Services (CIS) has granted a number of the petitioner's I-129 nonimmigrant petitions and asserts that such actions are "incongruous" with the current decision to deny the immigrant petition. However, the director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Therefore, counsel's reliance on prior approvals of the petitioner's nonimmigrant visa petitions as an accurate indicator of the outcome in this matter is unreasonable.

Although counsel indicated on the petitioner's Form I-290B that an appellate brief would be submitted within 30 days of filing, a brief has not been located in the record of proceeding. Accordingly, the AAO sent the petitioner's most recent attorney of record a fax indicating that an appellate brief has not been located. Counsel was given the opportunity to resubmit a copy of the appellate brief, assuming that a brief had been originally submitted within the initial 30-day period. To date, however, there is no indication that counsel has made any effort to communicate with the AAO regarding the petitioner's appellate brief. Accordingly, the record will be considered complete as currently constituted.

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 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.

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ORDER: The appeal is summarily dismissed.