



U.S. Citizenship
and Immigration
Services

BY
JUN 20 2005

[Redacted]

FILE: [Redacted]
EAC 03 142 50033

Office: VERMONT SERVICE CENTER Date:

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:

[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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 claims it is a limited liability company organized in the State of Michigan in June 1999. It wholesales, recycles, and exports computer products. 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 that the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner asserts that the beneficiary does not directly manage subordinates but that he is the senior level person in the U.S. organization responsible for expanding, organizing, directing, and developing the capabilities of the company. Counsel claims that the beneficiary is both an executive and a manager. Counsel attaches a copy of the beneficiary's job description for the petitioner and claims that the description has been submitted on two prior occasions. Counsel also attaches a copy of the petitioner's organizational chart and claims that it also had been previously submitted. Counsel submits copies of Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Federal Tax Return, for the first two quarters of 2003, copies of interior pictures relating to the U.S. facility, and copies of utility bills. Counsel submits for the first time on appeal, "a copy of Management Staff reporting to [the beneficiary] with attached detailed description of duties performed for each employee."

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."

Counsel's assertion regarding the beneficiary's duties is not supported in the record. 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). The petitioner's description of the beneficiary's duties for the U.S. entity was not in the record prior to its submission on appeal.¹ Likewise, the petitioner's organizational chart and the petitioner's description of the duties of the beneficiary's subordinates were not in the record until submitted on appeal. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

¹ The AAO notes that the petitioner submitted two copies of the description of the beneficiary's duties for the *foreign entity* in response to the director's request for evidence. However, the director did not have a copy of the description of the beneficiary's duties for the U.S. entity when making his decision.

The AAO observes that the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Of note, the petitioner's description of the beneficiary's duties for the U.S. entity portray an individual who is involved in supervising subordinates as well as spending a significant portion of his time marketing the company's products and negotiating contracts on behalf of the company. Although the beneficiary is not required to supervise personnel, if the petitioner suggests that the beneficiary's duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. The petitioner did not supply evidence to establish that the beneficiary supervised managerial, supervisory, or professional employees. Further, 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). Marketing the petitioner's products is not traditionally a managerial or executive job duty.

Counsel has not submitted evidence identifying an erroneous conclusion of law or a statement of fact as a basis for the appeal. Counsel's claims and assertions that documentation was previously submitted are not substantiated on appeal. The documentation previously requested by the director and submitted for the first time on appeal will not be considered by the AAO. Moreover, even if considered, the evidence submitted for the first time on appeal does not adequately address the deficiencies and inconsistencies in the record. Counsel's appeal letter does not provide evidence or argument adequately identifying an erroneous conclusion of law or a statement of fact; thus, the regulations mandate the summary dismissal of the appeal.

Moreover, beyond the decision of the director, the AAO observes that the petitioner submitted contradictory evidence regarding its legal status and its relationship with the beneficiary's foreign employer.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

In this matter, the petitioner indicates that the beneficiary worked for Prime Technologies as its chief executive officer in the seven years prior to entering the United States as an L-1A nonimmigrant transferee. The petitioner also claims that it is a [REDACTED] ability company and that [REDACTED] is its only member. However, the record also contains documentation indicating that the petitioner is a subsidiary [REDACTED] or a New Jersey branch office of that same company. Further, the petitioner has filed IRS Forms 1120, U.S. Corporation Income Tax Return, and has identified the beneficiary as its 100 percent owner. These inconsistencies have not been explained. 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). The record does not establish that the beneficiary in this matter was employed for at least one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive. *See* section 203(b)(1)(C) of the Act.

Inasmuch as counsel's assertions and documentation submitted 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. Moreover, the record contains significant unresolved contradictions on the issue of the petitioner's qualifying relationship with the beneficiary's claimed foreign employer.

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.