

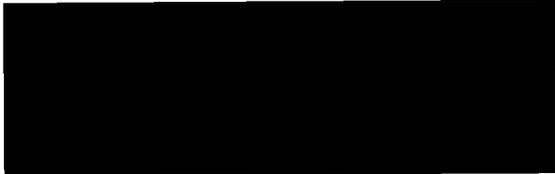
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date:  
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**MAR 02 2010**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Georgia corporation that 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.

After reviewing the record, the director determined that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity and denied the petition on that basis.

On appeal, the petitioner provides two statements dated May 12, 2008. The statement titled "Appeal of Motion to Reopen" summarizes the petitioner's list of employees, including their names, social security numbers, and respective salaries for 2006 and 2007. The petitioner also submitted 2006 and 2007 tax documents. With the exception of the petitioner's 2007 tax return, the remainder of the tax documents had been previously submitted either in support of the petition or in response to the director's request for additional evidence. The AAO further notes 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). As the Form I-140 in the present matter was filed in 2006, tax documents that reflect the petitioner's financial status after the filing of the petition are not relevant for the purpose of establishing the petitioner's eligibility at the time of filing.

The petitioner's second statement dated May 12, 2008 is a mere recreation of the statement that the petitioner initially submitted in support of its Form I-140. The only difference between the initially submitted statement and the one submitted on appeal was the percentage of time that was attributed to one of the four items that were listed as part of the beneficiary's job description. Specifically, in the initial support letter that was dated December 7, 2006, the petitioner indicated that 40% of the beneficiary's time would be attributed to cost control, reviewing proposals, supervision of personnel, purchasing equipment, and managing the budget. In the more recent letter submitted in support of the appeal, the petitioner attributed 30% of the beneficiary's time to the same set of responsibilities. It appears that the petitioner made this change upon taking note of the comment on page two of the denial, where the director observed that the total of the percentage breakdown amounted to 110% rather than 100%. The new percentage breakdown submitted on appeal seemingly corrects the factual impossibility of the prior percentage breakdown. The remainder of the content of the letter is nearly identical to the content of the initial support letter.

Despite the director's finding that the petitioner's staffing composition lacked the organizational complexity to support the beneficiary in a managerial or executive capacity and the determination that the petitioner failed to establish that the beneficiary would primarily perform qualifying managerial or executive tasks, the petitioner did not address or even dispute these valid criticisms. Thus, the petitioner's entire appeal consists of information that was previously submitted in one form or another and none of the submissions address the key elements of the director's decision.

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 the petitioner 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.