



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC-98-140-52081 Office: California Service Center Date:

SEP 12 2000

IN RE: Petitioner:
Beneficiary:

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)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on motion to reopen. The motion will be dismissed.

The petitioner is a [REDACTED] corporation that claims to be engaged in computer software consultancy. The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), to serve as the president. The director determined that the petitioner had not established that the beneficiary had been employed in a managerial or executive capacity.

On appeal, counsel argued that the beneficiary was eligible for the benefit sought.

The Associate Commissioner dismissed the appeal, affirming the decision of the director.

On motion, counsel submits resumes of individuals who were hired by the petitioner subsequent to the appeal. Counsel also submits photocopies of tax documents, a photocopy of a lease, and photocopies of various business contracts, all dated subsequent to the appeal.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided at the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. 103.5(a)(4) states that a motion that does not meet applicable requirements shall be dismissed.

The supporting documentation submitted with the motion to reopen does not establish that the petitioner was eligible for the benefit sought at the time the petition was filed. A petitioner must establish eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the evidence submitted on motion does not establish that the beneficiary was working as a manager or executive or will be working as a manager or executive.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. That burden has not been met. Accordingly, the previous decisions of the director and the Associate Commissioner will not be disturbed, and the motion will be dismissed.

ORDER: The motion is dismissed.