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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



JAN 30 2003

File: [Redacted] Office: NEBRASKA 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)

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the case will be remanded for further consideration.

The petitioner was incorporated in 1996 in the State of Colorado and is claimed to be an affiliate of Disant, a furniture manufacturing enterprise, located in Mexico. The petitioner is engaged in the business of selling furniture manufactured by its Mexican affiliate. It seeks to employ the beneficiary as the manager of U.S. operations. 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 had been and will be employed in a managerial or executive capacity. Specifically, the director stated that "[a]ll necessary evidence has been submitted and no underlying questions need resolved." For this reason, the director did not issue a request for additional evidence prior to rendering the decision to deny the petition.

On appeal, counsel asserts that the director's failure to request additional evidence, in effect, denied the petitioner the opportunity to establish eligibility to classify the beneficiary as a multinational executive. In support of his argument, counsel cites 8 C.F.R. 103.2(b)(8), which states the following, in pertinent part:

Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence of eligibility information is missing . . . the Service shall request the missing initial evidence, and may request additional evidence

8 C.F.R. 204.5(j)(3)(i) states, in part, the following:

A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer

In the instant case, the record is devoid of a statement from such an individual. Although the petitioner submitted a letter in support of the petition describing the beneficiary's past and proposed duties, that letter was written on the foreign entity's letterhead, and therefore cannot be said to have come from "an authorized official" of the petitioning entity. As indicated by

the record of proceeding, the director failed to issue a notice requesting that the missing evidence be submitted.

For this reason, the decision of the director will be withdrawn and the petition will be remanded for further action and consideration. The director must provide the petitioner with the opportunity to provide the missing evidence and any other additional evidence he deems necessary. As required by 8 C.F.R. 103.2(b)(8), the director shall provide the petitioner twelve weeks to respond to the request for evidence. Upon consideration of the requested evidence, the director shall then render a new decision.

ORDER: The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.