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U.S. Department of Justice

Immigration and Naturalization Service

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 31 2003

IN RE: Petitioner:
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:

[redacted]

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 employment-based visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be summarily dismissed.

The petitioner is engaged in the marketing and sale of decorative trim. It seeks to employ the beneficiary as its international export and office manager. Accordingly, it seeks classification of 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 or would be employed in a primarily managerial or executive capacity. The director also determined that the petitioner had failed to establish that it was doing business in the United States.

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.

On the Form I-290B Notice of Appeal, filed on June 20, 2001, counsel indicated that a brief and/or evidence would be submitted within 30 days. To date, more than one-year later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The statement on the appeal form reads:

> The Center Director's decision is in error, as it misinterprets and misapplies the regulatory definition of a manager. The beneficiary controls the major function of administrating the business operations on a daily basis, and has full authority and a [sic] wide latitude in the discretionary decisionn-making [sic] in all aspects of the petitioner's business. The decision appears to discriminate against the petitioner based upon its size, in violation of the standards set forth in Matter of Irish Dairy Board, Inc. (AAU November 16, 1989). Finally, contrary to the Center Director's assertion the petition [sic] submitted documentation requested of the Center Director in its RFE establishing that the US entity is doing business in the United States.

Counsel for the petitioner does not specifically identify how the director misapplied or misinterpreted the law in his brief statement on the appeal form. Counsel's conclusory statement regarding his belief that the beneficiary has wide latitude in

discretionary decision-making is without merit. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec.533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980).

Counsel's reference to an unpublished decision is also without merit. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the cited case. Moreover, unpublished decisions are not binding in the administration of the Act. See 8 C.F.R. 103.3(c).

Counsel's contention that the petitioner submitted the documentation requested by the director is not supported in the record. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The director specifically noted that the documents submitted in response to the request for evidence were for the foreign company and not for the petitioner. Counsel has not pointed out and the record does not reveal any specific documents that lead to a contrary conclusion.

Inasmuch as counsel does 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.

ORDER: The appeal is summarily dismissed.