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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
AAO, BCIS, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

JUL 24 2003

File: WAC 02 093 54850 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner operates as an importing agent of American apparel from Korean vendors. It seeks to employ the beneficiary as its president. Accordingly, it 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 or would be employed in a managerial or executive capacity for the United States petitioner. The director also determined that the petitioner had not submitted sufficient evidence to establish the claimed parent/subsidiary relationship.

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.

On the Form I-290B Notice of Appeal, filed on October 16, 2002, counsel states that a separate brief or evidence will not be submitted. Counsel also provides the following statement on the Form I-290B:

> California Service Center erred in [its] interpretation of the beneficiary's position as a manager when he has been the president. The beneficiary has been the president of the parent company in Korea since 1981 until he was transferred to U.S. subsidiary and has been the president of the U.S. subsidiary since 1998 to president [sic]. As the President, the beneficiary has been performing the following duties: He has been directing the management of the [petitioner]; He has established the corproation's [sic] policies and immediate and long-range goals; He has been exercising a wide latitude in most important decision making; and has received a minimal supervision from the Board of directors [sic] and parent company, Macro Textile.Com., in Korea. He has had authority to hire and fire employees, to set the employees' pay rate, and fringe benefits including vacation. He has been exercising full-scale discretion over the day-to-day operations; he has had authority to enter into binding contracts, hiring [sic] vendors and where to bank, authority to approve financial transactions, set the annual budget and etc. All of the above-stated job duties meet the IN & A [sic] Section 101(a)(44)(B).

> Secondly, the Korean parent company, Macro Textile.Com, has purchased all assets and liabilities of Terra Company in May 2002. Therefore it is the 100% shareholder of [the petitioner] and has been effectively controling [sic] the U.S. subsidiary. It is the lawful successor-in- interest [sic] of the Terra Company.
>
> Based on the above evidence, the Service center [sic] should have approved the I-140 that was filed under INA 203(b)(1)(C) by the petitioner. The denial of the I-140 must be revoked.

Counsel also submits the petitioner's stock certificate number three issued to Macro Textile.Com. Counsel further submits a letter from Macro Textile.Com stating that it had purchased all the assets and liabilities of the beneficiary's alleged overseas employer and that it now effectively owned and controlled the petitioner.

Counsel's claim that the beneficiary satisfies the elements of the definition for executive capacity by re-stating those elements does not identify the alleged errors of the director's decision. It is not clear from the above statements but counsel may also be asserting that the beneficiary's title of president requires the director to find that the beneficiary is an executive. However, the Bureau is not compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses an executive or managerial title. Rather the Bureau, when examining the executive or managerial capacity of the beneficiary, will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The director, in this case, relied upon the petitioner's description of the beneficiary's duties and found that the descriptions do not support the petitioner's claim that the beneficiary is either an executive or a manager. Counsel's assertion to the contrary is not persuasive. 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 re-statement of the petitioner's claim that it was a wholly owned subsidiary of a Korean company that was purchased by a different Korean company after the petition was filed, also does not identify a deficiency in the director's decision. [redacted] letter and the petitioner's stock certificate likewise do not address the director's concern. The director determined that the petitioner had not provided documentary evidence that payments had been made to accomplish the transfer between the two Korean companies. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); *see generally Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the

beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record still does not contain documentary evidence that Macro Textile.Com actually provided funds to purchase the beneficiary's alleged overseas employer. Of further note, the record contains only the petitioner's stock certificates two and three. The record does not contain the petitioner's stock certificate number one or the petitioner's stock ledger. Furthermore, the record does not contain documentary evidence that the beneficiary's alleged overseas employer, Macro Textile.Com's predecessor-in-interest, had actually purchased an interest in the United States entity.

Counsel does not specifically identify errors the Bureau made in its decision. Counsel's assertion regarding the beneficiary's managerial or executive capacity is not sufficient to form the basis of an appeal. Likewise, counsel's assertion that a qualifying relationship exists without the requested documentary evidence that could support a qualifying relationship is not sufficient on appeal. Inasmuch as counsel does not identify 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.