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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

[redacted]

JUN 20 2003

File: [redacted] Office: TEXAS SERVICE CENTER Date:

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)

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of Florida in February 2000. It is engaged in the wholesale of "oriental" items. It seeks to employ the beneficiary as its president. 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 requested a more detailed description of the beneficiary's duties and evidence of the petitioner's staffing levels on May 8, 2002. The director stated that, if the petitioner failed to respond to the request for additional evidence within 12 weeks from the date of the request for evidence, the petition would be denied. Thus, the deadline for a timely response was July 31, 2002. On August 19, 2002, the director denied the petition, stating that the Bureau had not received a response to the request for evidence.

On appeal, counsel for the petitioner submits an affidavit from a legal assistant in which the legal assistant swears that he is familiar with the petition and was "responsible for mailing the response to the request for evidence and confirms that the response was mailed timely. Counsel also submits the response to the request for evidence allegedly mailed in a timely manner. The response letter is dated July 12, 2002.

Upon review, counsel has not submitted sufficient evidence to support the claim that he made a timely submission of the response to the director's request for evidence. Neither the petitioner nor counsel for the petitioner submits mailing receipts or other documentary evidence to support the claim of timely mailing a response. The evidence is insufficient to establish that the petitioner's response to the director's request for evidence was timely filed. Even if the evidence submitted on appeal were accepted as timely filed, the petitioner failed to establish that the beneficiary is eligible for this visa classification.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the

> alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner initially described the beneficiary's duties as follows:

> As President, the applicant will continue to direct the overall management of the subsidiary company. His duties will include the continued development and modification of corporate goals and policies. He will also hold full authority to hire and fire staff as necessary, negotiate all key contracts, direct and supervise the lower management and staff in their respective functions as well as coordinating the work of all department heads. In summary, the applicant will manage all commercial activities of the subsidiary either directly or by delegation. He will function independently in this position answering only to the parent company's Board of Directors.

The untimely response to the request for evidence added only that the beneficiary made decisions unilaterally with respect to all functions, approved all capital expenditures and budgets, established reasonable goals in all departments, and evaluated efficiency.

The descriptions provided do not convey an understanding of the beneficiary's actual daily duties. Paraphrasing elements of the statutory definition of executive and managerial capacity is

insufficient to establish the executive or managerial nature of the beneficiary's position. In addition to the general description of the beneficiary's duties, the petitioner has not provided documentary evidence to substantiate decisions made by the beneficiary. 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 is insufficient to establish that the beneficiary's primary assignment for the petitioner was or would be in an executive or managerial capacity.

In addition, to the issue of the managerial or executive capacity of the beneficiary for the petitioner, the petitioner has not established that the beneficiary's duties for the overseas entity primarily encompassed managerial or executive duties. The petitioner did not provide a comprehensive description of the beneficiary's duties for the overseas entity.

Further, the petition was filed in June 2001, but the petitioner did not provide evidence that it was doing business for a full one-year period prior to filing the petition. The regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) requires the petitioner to submit evidence that the prospective United States employer has been doing business for at least one year. The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

> *Doing Business* means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

The petitioner has not provided evidence of transactions carried out by the petitioner in a regular, systematic, and continuous manner in the last half of the year 2000.

Finally, the petitioner did not provide adequate evidence of a qualifying relationship between the petitioner and the beneficiary's overseas employer. *See* 8 C.F.R. § 204.5(j)(2). The petitioner submitted two stock certificates. One stock certificate is issued to the beneficiary in the amount of five hundred shares. A second stock certificate is issued to the beneficiary's overseas employer in the amount of 500 shares. Although it appears that the beneficiary's overseas employer may own 50 percent of the petitioner and have de facto control of the petitioner through the exercise of its veto, the record contains insufficient evidence of the actual purchase of the petitioner's stock. The petitioner has not provided sufficient evidence to

establish a qualifying relationship with the beneficiary's overseas employer.

For all the reasons specified above, the petitioner has not established the beneficiary's eligibility for this visa classification. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.