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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 05 2005

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a company organized in the State of Florida in March 2000. It imports, exports, trades, and wholesales stone. 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.

On February 27, 2004, the director determined that the record contained insufficient evidence to establish that: (1) the beneficiary had been employed for one year with a foreign qualifying entity in a managerial or executive capacity; (2) the beneficiary would be performing in a managerial or executive capacity for the United States entity; or (3) the petitioner had been doing business for one year prior to filing the petition.

On appeal, the petitioner submits a letter stating its desire "to maintain a very solid and steady business, and continue to grow more and more," and that "U.S. company's employees and their families will be without income if we are not allowed to continue evolved in the business," and the beneficiary "and his vast experience will make him the only one to be responsible for directing entire operation of the U.S. company, developing and executing the necessary policies to effectively direct the company's management, hiring, dismissing and supervising managers and employees." The petitioner attaches invoices issued in the year 2004 and restates the beneficiary's duties for the foreign entity. The petitioner also re-submits the foreign entity's list of employees and its untranslated[1] organizational chart.

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."

The petitioner has not provided evidence that the beneficiary's position for the foreign entity, prior to entering the United States was in a managerial or executive capacity. The petitioner provides a broad description of the beneficiary's duties and does not specifically identify whether the beneficiary's duties were primarily managerial or executive. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager. The petitioner provides no new evidence on appeal and does not specify any erroneous conclusion of fact or law made by the director.

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[1] The petitioner is required to submit certified translations of documents not in the English language. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, any evidence not translated is not probative and will not be accorded any weight in this proceeding.

The petitioner does not provide additional evidence showing that the beneficiary's position for the United States entity is primarily managerial or executive. The petitioner's initial description and description in response to the director's request for evidence provided only a general overview of the beneficiary's daily duties. The descriptions suggested, at most, that the beneficiary spent the majority of his time on operational tasks associated with the petitioner's business. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner, again, does not explain or otherwise identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal on this issue.

Finally, the petitioner submits numerous invoices issued in 2004 to establish that it has been conducting business in a regular, continuous, and systematic way. However, the regulations require that the petitioner establish that it had been doing business for one year prior to filing the petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). The petition was filed December 12, 2002, thus the relevant time frame to establish the viability of the petitioner begins December 12, 2001 and continues until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). The record does not demonstrate that the petitioner was doing business, in a regular, continuous, and systematic fashion for one year prior to filing the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Inasmuch as the petitioner does not identify a specific erroneous conclusion of law or statement of fact on the issues raised by the director, the regulations mandate the summary dismissal of the appeal.

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 summarily dismissed.