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U.S. Citizenship
and Immigration
Services

134

FILE:

Office: VERMONT SERVICE CENTER

Date: APR 05 2005

IN RE:

Petitioner:

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:

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, Vermont 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 was organized in the State of New Jersey in April 2000. It sells computer hardware. It seeks to employ the beneficiary as its chief executive officer/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 determined that the petitioner had not submitted sufficient evidence to establish that the beneficiary would be employed in a managerial or executive capacity for the United States entity. The director specifically observed that the petitioner's initial description and description in response to her request for evidence involved duties associated with establishing the petitioner's business operations. The director also noted that although the petitioner claimed to employ five individuals subordinate to the beneficiary, the petitioner's tax documentation did not substantiate the full-time employment of the subordinates. Based on the record, the director determined that the beneficiary performed primarily the day-to-day marketing and purchasing necessary for the business to exist. The director concluded that the record did not demonstrate that the beneficiary functioned at a senior level within the organizational hierarchy other than in position title or that the beneficiary managed a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties.

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 attached a statement to the Form I-290B submitted on appeal repeating the description of the beneficiary's job duties previously submitted and asserting that the beneficiary's duties were executive duties. The previous descriptions and the description on appeal included duties, such as, making decisions to open and close bank accounts, apply for merchant accounts, sign tax returns and checks, make changes to the petitioner's structure, hire and fire employees and make decisions about salaries, wages, rents and leases, establish the goals and policies of sales and purchases, select locations, specify the goals and targets for the business, monitor and control the day-to-day matters of the business and direct the management of the organization. These statements suggest that the beneficiary is setting up a business and do not elaborate on the beneficiary actual daily duties. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). In this matter, the petitioner's descriptions, in addition to paraphrasing elements of the definitions of managerial and executive capacity, depict an individual who is performing the operational tasks associated with running a 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).

Regarding the beneficiary's subordinates, the petitioner stated that the beneficiary's subordinates did not perform the duties described in the beneficiary's job description but rather served in their own respective

departments under the supervision of the beneficiary. The petitioner did not explain or attach documentation substantiating its number of employees or demonstrating that the petitioner employed sufficient personnel to relieve the beneficiary from performing primarily non-qualifying duties. 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).

The petitioner did not submit clarifying documents or descriptions of the beneficiary's duties or substantiating explanations of its organizational structure on appeal. The petitioner's interpretation of the beneficiary's duties is not supported in the record. The petitioner does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal on these issues.

Inasmuch as a specific erroneous conclusion of law or statement of fact has not been identified, the regulations mandate the summary dismissal of the appeal.

Beyond the decision of the director, the petitioner has not established a qualifying relationship with the foreign entity. The petitioner claims that the beneficiary's foreign employer owns a majority interest in the petitioner. The petitioner submits stock certificates and a stock ledger in support of this claim. However, the petitioner's 2000 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, on Schedule L, Line 22, does not reflect that stock was issued. Further, the petitioner's 2001 and 2002 IRS Forms 1120, Schedule L, Line 22, shows that the petitioner's common and preferred stock was valued at \$33,487 in 2001 and \$58,622 at the beginning of 2002 and \$55,980 at the end of 2002. The value of the petitioner's common stock does not seemingly correlate with the number of shares the petitioner allegedly issued. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For this additional reason the petition will not be approved.

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.