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U.S. Citizenship  
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Services

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FILE: [Redacted]  
WAC 03 258 50384

Office: CALIFORNIA SERVICE CENTER

Date: NOV 23 2005

IN RE: Petitioner: [Redacted]  
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:



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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center denied the employment-based petition. The petitioner submitted an appeal to the Administrative Appeals Office (AAO) on August 16, 2004. The AAO affirmed the director's decision on May 31, 2005. The matter is now before the AAO on a motion to reopen and reconsider the previous decision. The motion will be dismissed.

The petitioner claims it is a company organized in the State of California in July 2000. It imports and distributes watches. It seeks to employ the beneficiary as its vice-president and product development manager. 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 denied the petition on July 17, 2004, determining: (1) that the petitioner had not established that the beneficiary had been employed abroad for the statutory period in a managerial or executive capacity; or (2) that the beneficiary would be employed in a managerial or executive capacity for the U.S. petitioner. The AAO dismissed the appeal, affirming the director's decision and also finding that the record did not establish that the petitioner had established a qualifying relationship with the beneficiary's foreign employer.

On motion, counsel for the petitioner submits a three-page brief and a June 20, 2005 letter from the managing director of the foreign entity and petitioner.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On the issue of the beneficiary's employment with the foreign entity for the statutory period, the AAO concluded based on the record that the beneficiary's foreign employment commencing in February 2000 was interrupted by the beneficiary's nonimmigrant entry into the United States in July 2000. The AAO further concluded that the record did not support that the beneficiary had been occupied primarily with qualifying duties for the foreign entity for a full year prior to his entry into the United States.

On motion, counsel for the petitioner asserts that "the eligibility requirement specifies only that the beneficiary be **employed** by the firm or a subsidiary thereof for the 1 year period, and not that the beneficiary's physical presence outside the United States is required or somehow his business dealings on behalf of the consolidated enterprise interrupts his employment with the firm or any subsidiary." Counsel also submits the foreign entity's managing director's letter further explaining the beneficiary's duties for the foreign entity.

Counsel does not submit new evidence or state reasons for reconsideration supported by pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law or policy. Counsel's assertion on motion does not address the deficiency in the record substantiating the beneficiary's employment for the foreign entity for the one-year period prior to the beneficiary's entry as a nonimmigrant. Counsel seems to suggest that the beneficiary's work since February 2000 has been consolidated between the foreign entity and the petitioner. However, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Moreover, the AAO declines to expand the beneficiary's work of setting up the petitioner and establishing his family in the United States as work on behalf of the foreign entity. The record and this premise are not substantiated in the record by supporting evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the June 20, 2005 managing director's letter is not a sworn statement and a motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The statement that has been provided on motion is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does the letter contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus, as is the case with the arguments of counsel, are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 188-89 n.6.; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503.

Counsel has not submitted evidence or argument sufficient to require the reopening of this matter. On this issue the previous decisions of the director and the AAO are affirmed.

On the issue of the beneficiary's employment in a managerial or executive capacity with the U.S. entity, counsel asserts that the initial evidence submitted was sufficient to establish the beneficiary's managerial or executive capacity for the United States petitioner. Counsel again refers to the June 20, 2005 managing director's letter as support for the motion to reopen and reconsider. However, again the unsupported statements of counsel on appeal or in a motion and unsworn statements are not evidence and are not entitled to any evidentiary weight and *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel has not submitted evidence or argument sufficient to require the reopening of this matter. On this issue the previous decisions of the director and the AAO are affirmed.

On the issue of the petitioner's qualifying relationship with the beneficiary's foreign employer, the AAO determined based on the record that an individual, not the beneficiary's foreign employer, had made the

contribution capitalizing the petitioner. The AAO concluded that this evidence contradicted the petitioner's claim that the foreign entity owned and controlled the petitioner. The AAO observed that the record did not contain evidence showing that the individual who had made the capital contribution owned a majority interest in the foreign entity so as to suggest that an affiliate relationship existed between the petitioner and the foreign entity.

On motion, counsel for the petitioner refers to the petitioner's stock certificate number 1 issued to the beneficiary's foreign employer as evidence that the petitioner is the foreign entity's subsidiary. Counsel asserts that the foreign entity's managing director made the capital contribution on behalf of the foreign organization. Again, counsel's assertions on motion are not entitled to any evidentiary weight. Further, the record contains no evidence of agreements that would support counsel's assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel has not submitted evidence or argument on this issue sufficient to justify reopening this proceeding. The previous decision of the AAO will be affirmed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states that: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.