



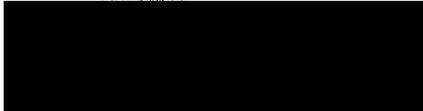
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: TEXAS SERVICE CENTER

Date: 22 APR 2002

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a corporation apparently organized in the state of Florida that claims to be engaged in the restaurant and investment business. It seeks classification of 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 prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas.

On appeal, counsel for the petitioner submits copies of previously submitted amended tax forms that do not reflect filing with the Internal Revenue Service (IRS).

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.

Title 8, Code of Federal Regulations, section 204.5(j)(3) states:

(i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a

managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

The issue in this proceeding is whether the petitioner has established that the prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas.

The petitioner initially submitted a letter on its letterhead signed by a "director" wherein the beneficiary's proposed duties for the petitioner were briefly described. The same director also submitted a letter on the letterhead of a purported foreign entity, Textiles "Hilfer" S.R.L. stating that the beneficiary had been employed by this concern since June of 1995. The letter of the foreign entity also briefly described the beneficiary's duties as its administrative director and manager of operations and marketing. The petitioner also submitted its 1998 IRS Form 1120, U.S. Corporation Income Tax Return noting on Schedule K, Line 5 that the beneficiary owned 100 percent of its stock. The petitioner also submitted IRS Form 941s for the 1999 year. The petitioner further submitted numerous documents, appearing to be bank statements and invoices, all in the Spanish language with no accompanying translations.

The director requested that the petitioner submit evidence that the prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas. The director also requested copies of State Quarterly Wage Reports for the year 2000 and copies of 1999 W-2s for all employees. The director finally requested a copy of the corporate tax return for 1999.

In response, the petitioner submitted a copy of its 1999 IRS Form 1120 signed by a preparer identifying a 25 percent foreign shareholder as Textiles Hilfer. The petitioner also provided its 1998 IRS Form 1120 noting that the return was an amended return to show the correct owner of the petitioner as Textiles Hilfer. The petitioner further provided IRS Form 5472 showing Textiles Hilfer as a related party to the petitioner. The petitioner did not offer any evidence that the IRS Forms had been filed with the Internal Revenue Service. The petitioner also submitted other tax documents showing wages paid in the years 1999 and 2000.

The director determined based on the IRS Forms submitted that the petitioner had not established that the prospective employer in the United States was the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas.

On appeal, the petitioner submitted amended IRS Forms 5472 and an accountant's statement that these amended forms had been filed with the Internal Revenue Service. The petitioner asked that the accountant's statement be referred to as an explanation of taxes.

Upon review, the record is unpersuasive in establishing that the beneficiary has been employed by an overseas company related to the petitioner. Review of the record reveals that the petitioner has not provided sufficient information regarding the overseas entity and how it relates to the petitioner. In light of the inconsistent tax forms with only an accountant's statement that the tax returns were properly filed, we are not assured that the beneficiary has been employed by two related entities as required by the regulation. We do note the failure of the director to point out the reason the petitioner's amended returns had not been considered. However, as the evidence does not adequately reflect that amended returns had been filed with the IRS the decision will not be withdrawn. The record lacks sufficient evidence to establish that a qualifying relationship exists between the petitioner and the foreign entity.

Further, the record lacks evidence to demonstrate that the beneficiary has been employed in a primarily managerial or executive capacity, as defined at 8 C.F.R. 204.5(j)(2). The statement provided by the director of the overseas entity describing the beneficiary's job duties is vague and does not adequately describe the beneficiary's duties on a day-to-day basis. The petitioner's statement of the proposed duties for the beneficiary is also vague and general in nature. The tax forms submitted to demonstrate the payment of wages to employees is not sufficient to establish that the beneficiary is managing a subordinate staff of professional, managerial or supervisory personnel who will relieve her from performing non-qualifying duties. The petitioner has not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

Finally, the petitioner has not submitted evidence that the purported affiliated overseas entity is doing business in a regular, systematic, and continuous manner, as required by 8 C.F.R. 204.5(j)(2). The untranslated documents that apparently refer to the overseas entity are not sufficient to establish that it continues to be active. 8 C.F.R. 103.2(b)(3) states:

Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Without translations, these documents provide no probative value in support of the petition.

As the record does not establish that the petitioner maintains a qualifying relationship with the claimed overseas company, or that the beneficiary has been or will function in a managerial or executive capacity, or that the overseas company is doing business, this petition may 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 dismissed.