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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

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

[Redacted]

File [Redacted]

Office: TEXAS SERVICE CENTER

Date:

JUN 24 2002

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)

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 preference 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 organized in the state of Florida in April of 1999. The petitioner is engaged in the import and export of window tinting film. 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 been doing business for one year prior to the filing of the petition on July 8, 2000.

On appeal, the petitioner asserts that the petitioner began doing business in May of 1999 and submits documentation to support this claim.

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 been doing business in a regular, systematic and continuous manner.

8 C.F.R. 204.5(j) 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.

In the initial petition, the petitioner submitted a copy of a lease with the beginning date of July 28, 1999. The petitioner also submitted copies of its monthly bank statements for the months of May 1999 through April 2000. The May statement reflected a beginning balance of \$200 and an ending balance of \$141.25. There were no deposits reflected and two withdrawals/debits. The June statement reflected two deposits/credits and four checks written with the ending balance of \$18,718.24. The July statement reflected one deposit, seven checks written, two withdrawals/debits and an ending balance of \$5,209.64.

The petitioner also submitted invoices and bills of lading, all except for two, dated after July 8, 1999. One invoice was dated June 8, 1999 indicating products had been purchased by the petitioner's alleged parent company and shipped to the petitioner's alleged parent company. The second, an invoice dated June 28, 1999, from the cargo shipping company to the petitioner for shipping services and a bill of lading dated June 28, 1999 identifying the petitioner as the exporter.

The petitioner further provided its Internal Revenue Service Form

(IRS) 1120, U.S. Corporation Income Tax Return for the year 1999. The 1999 IRS Form 1120 revealed gross receipts of \$294,867, total income in the amount of \$53,459 and salaries paid in the amount of \$26,000. The petitioner also provided IRS Form 941s for the quarters ending September 30, 1999 showing three employees, the quarter ending December 31, 1999 showing three employees and the quarter ending March 31, 2000 showing four employees.

The director requested documentary evidence of the date the petitioner had begun doing business.

In response, the petitioner re-submitted its Articles of Incorporation revealing the incorporation date as of April 14, 1999. The petitioner also re-submitted the lease agreement dated July 28, 1999 and the explanation that its accountant had searched for an office for over two months before renting the office described in the lease.

The director determined that the petitioner had not established that it had been doing business for at least a year prior to filing the petition.

On appeal, the petitioner re-submits its May, June and July bank statements. The petitioner also submits three invoices dated May 15, 1999, June 23, 1999 and July 26, 1999. In each of the invoices, the products are sold to and shipped to the petitioner's alleged parent company. The petitioner is identified as the exporter. The petitioner further provided accompanying invoices from a shipping company to it for shipping services that had been received by the petitioner in May, June and July. The petitioner finally provided a rental agreement dated March 1, 1999 between the petitioner as lessor and an unrelated import and export company as lessee. The petitioner asserts that it began business in May of 1999 and had a small office near the accountant's office prior to moving to its present location.

On review, the record as presently constituted is not persuasive in demonstrating that the petitioner has been engaged in the regular, systematic, and continuous provision of goods or services. The petitioner claims to be engaged in the import and export of window tinting film, with a gross annual income of \$294,867 for the year the company was incorporated. The record contains evidence that the company was incorporated in April of 1999, opened a bank account in May of 1999 and acted as the exporter for three shipments made to its alleged parent company in May, June and July of 1999. The opening of a bank account and the two shipments made on behalf of the parent company prior to July 8, 1999 are insufficient to establish that the petitioner was doing business in a regular, systematic and continuous manner in the months of May and June and beginning of July. The invoices provided show little more than the petitioner acting as an agent or office for its alleged parent company.

In addition, the petitioner has not submitted evidence of employees prior to the quarter ending September 30, 1999. Furthermore, as noted by the director, the petitioner has failed to establish that it had a place of business prior to July 28, 2000. The rental agreement dated March 1, 1999 is for premises purportedly leased by the petitioner to an unrelated company. Further, the petitioner entered into this agreement prior to its incorporation. The March 1, 1999 agreement does not contribute to a finding that the petitioner was doing business for one year prior to filing the petition. Likewise the lack of documentary evidence showing employees prior to July of 1999 does not lead to a conclusion that the petitioner was doing business in May and June of 1999 in a regular, systematic, and continuous manner.

The petitioner has failed to demonstrate that it has been doing business through the regular, systematic, and continuous provision of goods or services. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has submitted inconsistent information regarding its relationship with the overseas entity. The petitioner has provided stock certificates indicating that it has issued shares to an overseas entity and is wholly owned by that entity. However, the petitioner's IRS Form 1120 Schedule K at line 4 for the year 1999 reveals that it is not a subsidiary in an affiliated group or a parent-subsidiary controlled group. Further, at line 10 of the same Schedule K, the petitioner indicates that no foreign person owned directly or indirectly 25 percent of the petitioner. Because the appeal is dismissed for the reason stated above, this issue is not examined further.

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.