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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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MAR 29 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
Petition: WAC 99 233 51975

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker 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:

[redacted]

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 of the California Service Center denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn. The matter will be remanded to the director for entry of a new decision.

The petitioner is a California corporation that seeks to employ the beneficiary as its president. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because evidence in the failed to establish that the proffered position was in a managerial or executive capacity. The director noted in the denial letter that the petitioner failed to respond to a request for evidence that the director issued on October 12, 2000.

On appeal, counsel submits additional evidence relating to the relationship between the petitioner and the foreign entity.

A review of the record reveals the following procedural history:

- On October 12, 2000, the director issued to the petitioner a Request for Evidence (RFE). The RFE informed the petitioner that it had 84 days to submit the requested information, and indicated, "You are given until January 4, 2000 in which to submit the information requested."

- On November 6, 2000, the director received a letter from counsel. Counsel informed the director that the date of January 4, 2000 on the RFE was incorrect, as 84 days from October 12, 2000 would be January 4, 2001, not January 4, 2000. Counsel requested that the director issue a new RFE with a correct date.

- On December 19, 2000, the director denied the petition. The director acknowledged that she "inadvertently stamped the due date as January 4, 2000 and not January 4, 2001." The director noted, however, "that the petitioner responded to the request acknowledging that he recognized the fact that eighty-four days was meant as January 2, 2001. Citing the regulation at 8 C.F.R. § 103.2(b)(8), the director noted that the petitioner failed to submit the requested evidence and, therefore, there was insufficient evidence to show that the beneficiary would be employed in a managerial or executive capacity.

The director's denial of the petition was erroneous. When counsel informed the director that he had placed an incorrect date on the RFE, the director should have issued a new RFE to the petitioner. Counsel's letter informing the director of the error should not have been construed as a request for a decision based upon the record. *See* 8 C.F.R. § 103.2(b)(11). Accordingly, the director's decision to deny the petition must be withdrawn.

The director must issue to the petitioner a new RFE and provide the petitioner with an opportunity to respond. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of December 19, 2000 is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.