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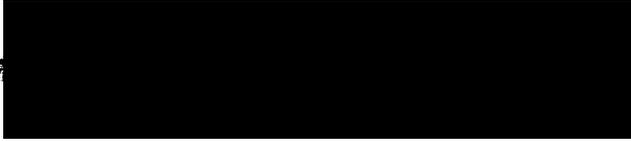
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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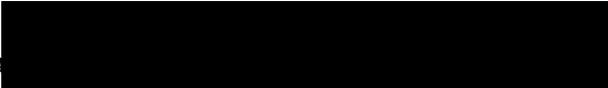
Office: VERMONT SERVICE CENTER

Date: JUN 07 2005

EAC 04 115 54215

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 preference visa petition was denied by the Acting Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.¹

The petitioner was incorporated on February 28, 2001 in the State of Massachusetts and is engaged in the business of providing corporations with promotional products and services. It seeks to employ the beneficiary as its managing director. 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.

On August 25, 2004, the acting director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. In reaching this conclusion, the acting director noted that the record does not "establish that the beneficiary's managerial experience and education qualifies him/her as an Executive/Manager while employed by your organization."

While the acting director's ultimate conclusion may be on point, there is no statute or regulation that mandates that a petitioner must establish that the beneficiary possesses managerial experience or certain type of education in order to qualify as a multinational manager or executive. Rather, section 203(b)(1)(C) of the Act clearly states that the beneficiary's prior overseas employment must have been with the qualifying foreign entity; such employment must have continued for at least one of three years prior to the beneficiary's entry to the United States as a nonimmigrant; and such employment must have been in a managerial *or* executive capacity. There is no statute or regulation requiring the prior employment to have been in a managerial capacity. Nor is the beneficiary required to have attained a particular level of education.

Furthermore, the acting director failed to issue a request for additional evidence. While the AAO acknowledges that this step is not required in the denial of every petition, the regulations at 8 C.F.R. § 103.2(b)(8) state that when the petitioner fails to submit initial evidence in support of the petition, CIS shall request that the petitioner submit the missing evidence and may request that the petitioner submit additional evidence. The regulation at 8 C.F.R. § 204.5(j)(3)(i) states that the following qualifies as initial evidence: 1) evidence of the beneficiary's qualifying overseas employment, 2) evidence of a qualifying relationship between the U.S. petitioner and the beneficiary's foreign employer, and 3) evidence that the petitioner had been doing business for one year prior to filing the petition. In addition, the regulation at 8 C.F.R. § 204.5(g)(2) states that proof of the petitioner's ability to pay the beneficiary's proffered wage is also deemed initial evidence.

In the instant matter, a review of the record indicates that the petitioner failed to provide the following required initial evidence: 1) information regarding the beneficiary's job duties abroad with a qualifying organization; 2) evidence establishing that the petitioner had been doing business in the United States for one year prior to filing the instant petition; and 3) evidence that the petitioner has the ability to pay the beneficiary's proffered wage. While the director referred to the petitioner's Form 1120 tax return for 2002, the

¹ It is noted that the petition and the appeal were prepared by an immigration service provider. Although the petition is accompanied by a Form G-28, Notice of Entry of Appearance by an Attorney or Representative, the immigration service provider has not established that it is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. See 8 C.F.R. § 292.1. Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

current petition was not filed until March of 2004. As accurately stated by counsel, the petitioner is not required to establish eligibility two years prior to filing the I-140 petition. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Accordingly, the AAO must withdraw the acting director's decision and remand the case. The director shall address the deficiencies of the prior decision by properly issuing a request for evidence, which will instruct the petitioner to submit all of the missing initial evidence. The director shall also instruct the petitioner to submit additional evidence regarding the beneficiary's proposed duties in the United States. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The director shall caution the petitioner that the actual duties themselves reveal the true nature of the employment. *Id.*

Further, as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986).

In the instant matter, the petitioner's only evidence of a qualifying relationship with the beneficiary's foreign employer is a single stock certificate. As such, the director shall request that the petitioner submit evidence that the foreign entity actually paid for ownership of the stock it was apparently issued. The director may also request any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

ORDER: The decision of the director dated August 25, 2004 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which shall be certified to the AAO for review.