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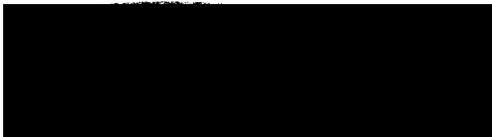
Office: VERMONT SERVICE CENTER

Date: JUN 07 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, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner appears to be engaged in some form of building and construction. The petition does not indicate when the petitioner was established or how many employees it had at the time the petition was filed. The petitioner seeks to employ the beneficiary as its president. 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 determined that the petitioner had failed to establish that it had been doing business in the United States for one year prior to filing this petition.

On appeal, counsel disputes the director's findings and submits additional evidence in support of the petitioner's initial 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.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in this proceeding is whether the petitioner had been doing business for at least one year prior to the date it filed the petition.

Pursuant to the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D), the petitioner is required to submit evidence that the prospective United States employer has been doing business for at least one year.

The regulation at 8 C.F.R. § 204.5(j)(2) states that 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."

On December 24, 2003, the petitioner filed a petition to classify the beneficiary as a multinational manager or executive. Based on the petition's filing date and 8 C.F.R. § 204.5(j)(3)(i)(D), the petitioner must establish that it had been doing business since December 24, 2002 in order to meet the regulatory requirement.

In the instant matter, the petitioner failed to submit any information to supplement the petition. Accordingly, on March 30, 2004, the director issued a request for additional evidence (RFE) instructing the petitioner to submit a variety of additional information, including the petitioner's two most recent tax returns.

The petitioner's response included its 2003 partnership return Form 1065. Although the petitioner has indicated that its business is building cabinets, no evidence was submitted to show how the petitioner's income was generated. Rather, the petitioner submitted a letter, dated June 17, 2004, indicating that the petitioner has a marketing representative whose main task is to market the petitioner's cabinetry products to the target clientele. The record was not, however, supplemented with documentary evidence that the petitioner's products were being sold on a regular, systematic, and continuous basis. *See* 8 C.F.R. § 204.5(j)(2).

On August 16, 2004, the director denied the petition concluding that the petitioner failed to establish that it had been doing business for one year prior to filing the petition.

On appeal, counsel explains that the petitioner is a carpentry and home remodeling company that has been doing business since January 2003. Thus, by counsel's own admission, the petition was filed no more than 11 months after the petitioner commenced doing business and does not meet the regulatory requirement described in 8 C.F.R. § 204.5(j)(3)(i)(D). While the petitioner submits a number of letters from purported clients, such letters are mere third party claims that are no different from the petitioner's own claim. 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)). Claims of the petitioner's clientele must be corroborated with documentary evidence much like the petitioner's claim; otherwise, meeting the burden of proof would merely be a matter of having unknown individuals make uncorroborated statements that are favorable to the petitioner's case.

Although the record also contains checks from a purported client, all are written out to the beneficiary, not to the petitioner, and reflect services that were apparently rendered in 2004. It is noted that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Additionally, the petitioner submitted a number of receipts showing purchases made at the Home Depot store. However, the receipts have no probative value in this case for a number of reasons. One, the AAO cannot determine who made the purchases, as such information is not contained within a regular store purchase receipt; two, there is no indication that the purchases were made for business purposes, as opposed to personal use; and three, even if the first two factors were established in a light that is most favorable to the petitioner, none of the receipts establish that the petitioner conducted business starting in December of 2002.

Overall, the evidence of record fails to establish that the petitioner had been doing business since December of 2002, one year prior to the filing of the petition. For this reason, the petition cannot be approved.

Beyond the decision of the director, the record does not contain a letter from an authorized official of the petitioner demonstrating that the beneficiary was employed abroad for the requisite time in a managerial or executive capacity as required by 8 C.F.R. § 204.5(j)(3)(i)(B). The undated letter submitted in support of the petition and composed on the letterhead of the foreign entity does not indicate when or how long the beneficiary was employed by the foreign entity. As such, the AAO cannot conclude that the beneficiary was employed abroad for the requisite period of time. Nor does the record establish that the U.S. petitioner would employ the beneficiary in a qualifying managerial or executive capacity. Although instructed in the RFE to submit additional evidence regarding the beneficiary's duties abroad and his prospective duties in the United States, the petitioner failed to do so. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). It is noted that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In addition, the record lacks sufficient documentation to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 204.5(j)(3)(i)(C). *See also* 8 C.F.R. § 204.5(j)(2). According to the undated letter from an official of the foreign entity, the petitioner was set up as a wholly-owned subsidiary of Comex SA, the beneficiary's foreign employer. However, the petitioner's operating agreement, entered into on October 3, 2003, indicates that the foreign entity and the beneficiary each own 50% of the U.S. petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the instant matter, the petitioner has neither acknowledged nor submitted evidence to reconcile this considerable inconsistency regarding its ownership. Therefore, the petitioner has failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional grounds discussed above, this petition cannot be approved.

Finally, in the denial, the director noted that the petition states that the business was started on July 3, 2003. However, a review of the petitioner's Form I-140 suggests that the director's observation was inaccurate. Part 5, Item 2, which instructs the petitioner to enter the date when it was established, was left blank. Although the petitioner's 2003 tax return indicates that the petitioner was established on July 3, 2003, as noted by the director, this information was not included in the petition. As such, the director's erroneous comment is hereby withdrawn. Nevertheless, based on the issues addressed in this decision, the petition cannot 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. The petitioner has not sustained that burden.



**ORDER:** The appeal is dismissed.