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FILE:



EAC 04 043 50961

Office: VERMONT SERVICE CENTER

Date: JUN 13 2005

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 Director, Vermont Service Center, initially approved the employment-based petition. Upon subsequent review, the director properly issued a notice of intent to revoke and ultimately revoked the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner was organized in the State of New York in October 2002. It exports automotive products to China. It 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.

In a June 23, 2004 notice of intent to revoke, the director listed numerous discrepancies in the documents submitted in support of the petition. The director determined based on the petitioner's bank statements that the beneficiary appeared to be the petitioner's only employee. The director noted that this evidence conflicted with the petitioner's payroll documentation and with the petitioner's Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Federal Tax Return. The director also noted that the level of the petitioner's business was significantly less than that claimed on the petitioner's 2002 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return. The director determined that documentation submitted in support of the petition might be fraudulent. The director also noted that the description of the beneficiary's proposed job duties for the petitioner were vague and did not demonstrate the beneficiary's actual daily duties. The director determined that the evidence in the record did not establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director also questioned the petitioner's qualifying relationship with the beneficiary's claimed foreign employer. The director suggested several forms of evidence that would assist in rebutting her intention to revoke the petition.

In the director's September 27, 2004 revocation decision, the director noted that the petitioner had submitted several cancelled checks issued by the petitioner to the beneficiary in rebuttal to her notice of intention to revoke. The director determined, however, that the cancelled checks did not address the inconsistent evidence and possible misrepresentations made by the petitioner. The director determined that the petitioner had not overcome the grounds of revocation, and revoked approval of the petition.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on October 15, 2004 the petitioner indicated that a separate brief and/or evidence would be submitted. The record contains an October 6, 2004 letter requesting: "our application [be] considered under section 106(c) of the AC21 Act." The record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

It appears the petitioner's October 6, 2004 letter is in connection with the director's denial of the beneficiary's Form I-485, Application to Register Permanent Resident or Adjust Status. The petitioner does not submit a brief or evidence identifying an erroneous conclusion of law or a statement of fact in the director's Form I-140 revocation decision as a basis for the appeal; thus, the regulations mandate the summary dismissal of the appeal.

Of note, the beneficiary's new job and the portability considerations of AC21¹ are separate issues that must be addressed in the adjudication of the beneficiary's I-485 application, not in the I-140 revocation decision. No appeal lies from the denial of an application for adjustment of status under section 245 of the Act, 8 C.F.R. § 245.2(a)(5)(ii). However, the AAO observes that for the portability provisions to apply, the underlying petition must be "valid" to begin with if it is to "*remain* valid with respect to a new job." Section 204(j) of the Act, 8 U.S.C. § 1154(j) (emphasis added). In this matter, the record does not establish the beneficiary's initial eligibility for this visa classification.

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 summarily dismissed.

¹ In 2000, Congress passed American Competitiveness in the Twenty-First Century Act (AC21), Pub. L. No. 106-313, 114 Stat. 1251 (Oct. 17, 2000). Section 106(c) of AC21 amended section 204 of the Act. The "portability provision" at section 204(j) of the Act provides that "an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed." Citizenship and Immigration Services has not issued regulations governing to this provision.