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



U.S. Citizenship
and Immigration
Services

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JUN 20 2005

FILE: [REDACTED]
EAC 03 067 50058

Office: VERMONT SERVICE CENTER

Date:

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:

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

The petitioner is a telecommunications services provider seeking to employ the beneficiary as its chief executive officer. 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 failed to establish that the beneficiary had at least one year of full-time employment with a qualifying entity one year within the date of filing the instant I-140 petition. In making this determination, the director noted that the petitioner's 2001 tax return did not indicate that the beneficiary was paid a salary during that tax year and therefore failed to establish that the beneficiary was employed by the petitioner "for the required year before the filing of this petition."

The director's comments indicate that the denial was primarily based on the petitioner's failure to establish that the beneficiary was employed by the petitioner in the United States for one year prior to filing the petition. The director's interpretation of the regulations, however, is erroneous. Contrary to the director's comments, neither the statute nor the regulations that govern the filing of the I-140 preference visa petition require that the petitioner establish that the beneficiary was employed by the *petitioner* for one year prior to filing the I-140 petition. The one-year requirement of 8 C.F.R. § 204.5(j)(3)(i)(A) and (B) only refers to the beneficiary's employment abroad, prior to entering the United States, and provides a three-year time period during which the one-year requirement must be met. While the AAO cannot conclude with any degree of certainty that the beneficiary was employed abroad in a qualifying position, this issue was not explored or even addressed by the director. 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). In the instant case, the petitioner responded to the director's February 18, 2003 request for evidence with a list of the beneficiary's proposed job duties and the petitioner's organizational chart. However, there is no indication that the director considered either of these pertinent pieces of information.

Accordingly, this case will be remanded so that the director can adequately review all of the pertinent evidence and address the issues cited above.

ORDER: The decision of the director, dated November 7, 2003, is withdrawn. The matter is remanded for the purpose of issuing a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.