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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 11 2005
SRC 03 199 50130

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

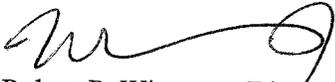
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Georgia corporation claiming to be engaged in the retail of silver jewelry, perfume, and leather products. In a letter dated July 1, 2003, [REDACTED] a partner of the foreign entity, claimed that 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 letter of employment was not signed by "a United States employer" and denied the petition.

On appeal, counsel disputes the director's findings and submits a brief in support of his assertions.

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 the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and 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. See 8 C.F.R. § 204.5(j)(5).

The issue in this proceeding is whether the petitioner complied with 8 C.F.R. § 204.5(j)(5) as described in the paragraph above.

In support of the initial petition, the foreign entity submitted a letter dated July 1, 2003 discussing the petitioner's business and the beneficiary's prospective responsibilities with the company under an approved

petition. The AAO notes that the letter was written on the foreign company's letterhead and was signed by [REDACTED] who identified himself as "partner."

On November 12, 2003, the director issued a notice requesting that additional evidence be submitted. The director quoted the regulation at 8 C.F.R. § 204.5(j) in his request for persuasive documentary evidence defining the beneficiary's proposed and prior duties.

The petitioner responded with a letter from counsel dated February 9, 2004. The letter described the attached evidence that addressed the director's request. Among the exhibits submitted was a description of the beneficiary's proposed list of duties in the United States. As with the initial offer of employment, that description was signed by [REDACTED] and was written on the foreign company's letterhead.

On March 12, 2004, the director denied the petition noting that the foreign entity's president signed all correspondence regarding the beneficiary's employment in the United States. The director further noted that [REDACTED] name does not appear on the petitioner's organizational chart, nor did the petitioner issue him a W-2 wage and tax statement, which would indicate this individual's employment with the U.S. entity. The director ultimately concluded that [REDACTED] is not an employee of the petitioner and, therefore, is not vested with the authority to extend an offer of employment with the U.S. entity. As such, the petitioner failed to comply with the regulation at 8 C.F.R. § 204.5(j)(5), which requires the prospective employer to extend a job offer to the beneficiary along with the I-140 petition.

On appeal, counsel asserts that the regulations are not specific on the issue of who is authorized to sign the petition and claims that "common sense" should prevail in governing this issue. Counsel also explains that [REDACTED] is the president of the foreign entity and has a 25% ownership interest in that entity, which imply that he has unspoken authority to sign on behalf of the U.S. petitioner. Counsel's assertions, however, are without merit, as the regulation at 8 C.F.R. § 204.5(j)(5) clearly requires that the beneficiary's employment offer be extended by the petitioner and not merely by anyone who is in any way affiliated with the foreign entity. This pertinent regulation was discussed in the request for additional evidence allowing the petitioner the opportunity to submit the required job offer. When such evidence was not submitted with the petitioner's response, the director denied the petition specifically explaining that a job offer from the foreign entity's owner and president does not equate to a job offer from the petitioner. Yet, instead of providing the necessary evidence on appeal, counsel chose to put forth arguments defending the petitioner's claimed right to assign its obligations to an unrelated and uninterested party. Due to the petitioner's failure to comply with the regulation at 8 C.F.R. § 204.5(j)(5), this petition cannot be approved.

Furthermore, though not explicitly addressed by the director in his denial of the instant petition, the petitioner has failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. The proposed duties as described by [REDACTED] include managing retail operations; training staff; planning the petitioner's finances; researching new investments; and meeting with potential partners and investors. However, reciting the beneficiary's vague job responsibilities or broadly cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Thus, even if the AAO were to accept Noorally R. Bhayani as acting on behalf of the petitioner, the record lacks sufficient

information regarding the beneficiary's duties to enable the AAO to affirmatively conclude that the beneficiary would primarily perform duties of a managerial or executive capacity.

It is noted that 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). Thus, based on the additional ground discussed in the paragraph above, this 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.