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U.S. Citizenship
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BA

FILE: [REDACTED]
SRC 05 800 15160

Office: TEXAS SERVICE CENTER Date:

OCT 17 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:

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, Texas Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition seeking to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Florida that provides tourism services. The petitioner seeks to employ the beneficiary as a manager or executive.

The director denied the petition concluding that the petitioner had not established that: (1) the beneficiary had been employed abroad and would be employed in the United States in a primarily managerial or executive capacity; (2) the existence of a qualifying relationship between the foreign and United States entities; (3) the petitioner has been doing business in the United States for at least one year prior to filing the instant petition; or (4) the petitioner has the ability to pay the beneficiary his proffered salary.

On appeal, the petitioner submits documentation, which the petitioner claims supports the beneficiary's eligibility as a multinational manager or executive.

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 or 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.

On appeal, the petitioner failed to submit any documentary evidence related to the beneficiary's employment capacity both abroad and in the United States or the petitioner's ability to pay the beneficiary's proposed salary. As the petitioner did not offer any evidence in rebuttal to the director's findings, the director's decision

with regard to these issues will be affirmed. 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)). Consequently, the petition will be dismissed based on these issues alone.

The AAO will next consider the remaining two issues of whether the petitioner demonstrated the existence of a qualifying relationship between the foreign and United States entities or that it had been operating in the United States for at least one year prior to filing the immigrant petition.

In a February 19, 2005 Notice of Intent to Deny, the director requested documentation associated with the petitioner's United States business, as well as evidence of a qualifying relationship with a foreign organization. The petitioner failed to respond to the director's request, noting on appeal that it had moved its location and, therefore, was not able to file a timely response. The petitioner submits a minimal amount of evidence on appeal related to each issue. Specifically, with regard to a qualifying relationship, the petitioner provided two stock certificates, numbered three and five, identifying two individual shareholders as the owners of 240 and 250 shares of stock. The petitioner also provided two invoices, a company brochure and travel reports as evidence of its business operations in the United States prior to the filing of the petition.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* The petitioner's note on appeal that the director's request was not timely received is not persuasive. Section 265 of the Act requires the petitioner to notify Citizenship and Immigration Services (CIS) in writing of a change in address and the new address. CIS records do not reflect a change in address by the petitioner. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 dismissed.