



U.S. Citizenship
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File: WAC 04 800 58573

Office: CALIFORNIA SERVICE CENTER

Date: APR 26 2006

IN RE: Petitioner:
Beneficiary:



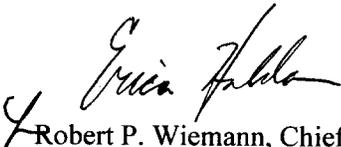
Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a corporation organized in the State of California in April 1999. It trades in scrap metal. It seeks to employ the beneficiary as its president and 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 denied the petition November 9, 2005, determining that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

On appeal, the petitioner submits five documents previously submitted, a photocopy of the beneficiary's California driver's license, and a request for oral argument.

On the Form I-290B Notice of Appeal, filed December 9, 2005, the petitioner indicates that a separate brief and/or evidence is being submitted with the Form I-290B.

The petitioner's statement on the appeal form reads:

The denial may please be revoked in consideration of the following convincing overriding evidence/factor: The ownership of the Foreign (Indian) Company is Proprietor based, the sole owner being Rahul Bahl, who happens to be the beneficiary in the filed petition. Hence the plea that the petitioner is a qualifying organization. Enclosed: Proprietary [sic] Evidence.

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 that 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 director in this matter noted specific inconsistencies: between the petitioner's stock certificates and stock ledger; in the petitioner's Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return for the 1999, 2000, 2002, 2003, and 2004 years; and, in the wire transfers that allegedly were used to capitalize the petitioner. The petitioner failed to address the inconsistencies in the record regarding the capitalization of the petitioner, the stock certificates and stock ledger, and the petitioner's IRS Forms 1120. The documents submitted, save for the photocopy of the beneficiary's California driver's license, were already in the record of proceeding, have been reviewed by the director, and do not explain the inconsistencies in the record regarding the petitioner's ownership and control.

As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As noted by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest. The petitioner in this matter has not provided evidence on appeal that explains or clarifies the inconsistent information regarding the petitioner's ownership and control. The AAO questions the legitimacy of the petitioner's claimed corporate structure. 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). As the director observed, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

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."

The petitioner's statement does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal. The evidence submitted does not address the inconsistencies in the record regarding the petitioner's ownership and control.

The AAO acknowledges the petitioner's request for oral argument; however, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. In fact, the petitioner set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings is sufficient to fully represent the facts and issues in this matter. Consequently, the request for oral argument is denied.

Beyond the decision of the director, the AAO questions the legitimacy of the petitioner's organizational structure. The petitioner has indicated that it employs seven individuals including the beneficiary. However, the petitioner's office is located in the beneficiary's apartment. The record contains the beneficiary's residential lease that restricts occupation of the premises to three occupants and limits the use of the apartment to housing accommodations only. This evidence casts further doubt on the validity of the petitioner's operations. As the petition will be dismissed for the reason cited above, this issue will not be discussed further.

Inasmuch as counsel does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

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 summarily dismissed.