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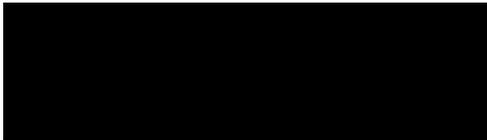
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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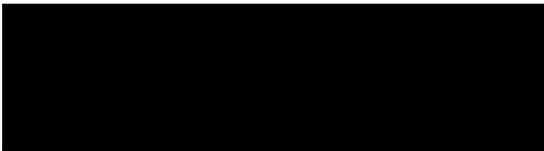


FILE: WAC 04 009 52714 Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2006

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:



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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner was established in California in March of 1995 as a branch office. The petitioner imports grains and roughage products from the United States to Japan and seeks to employ the beneficiary as its general manager. 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.

On March 23, 2005, the director issued a notice denying the petition. Specifically, the director took note of the petitioner's Forms 1120-F for the 2002 and 2003 tax year and determined that the forms provide no information regarding income the petitioner may have earned. The director concluded that the petitioner failed to establish that it had been doing business in the United States or that it had been paying the beneficiary's salary.

However, none of the documentation requested in the request for evidence (RFE) dated September 16, 2004 would have enabled the director to gauge whether the petitioner was engaged in "the regular, systematic, and continuous provision of goods and/or services" for one year prior to filing the Form I-140 as required by 8 C.F.R. § 204.5(j)(3)(i)(D). *See* 8 C.F.R. § 204.5(j)(2). As the petitioner is a branch, not a subsidiary, of a foreign entity and files its tax returns abroad, the petitioner's state and federal tax return can provide a very limited overview of the petitioner's financial status during the relevant time period. Furthermore, the petitioner has indicated that it is an import-based business. Therefore, the most accurate indicators of the petitioner's doing business would be invoices showing purchases made by the petitioner from U.S. suppliers, as well as bills of lading, customs forms, and any other shipping documents that indicate consistent export activity out of the United States. None of this relevant documentation was requested in the Request for Evidence. Accordingly, the director is hereby instructed to request such documentation, which will assist Citizenship and Immigration Services (CIS) in determining whether the petitioner had been doing business during the relevant time period.

Although the petitioner submitted a number of documents regarding transactions that took place after the petition was filed, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, the director is instructed to caution the petitioner as to the specific time period in question and to instruct the petitioner to submit documentation specifically related to that relevant period, i.e., the one-year period prior to the filing of the petition.

Additionally, the director determined that the petitioner failed to establish its ability to pay the beneficiary's proffered wage, which, according to Part 6, Item 9 of the Form I-140, is \$119,914 per year. However, there is no indication that the director considered the beneficiary's 2003 W-2 wage statement, which was submitted as part of the petitioner's response to the director's RFE and shows that the beneficiary's salary was only 1.6% below the beneficiary's significant proffered wage.

The director also failed to address the lack of sufficient information regarding the beneficiary's past and proposed job duties. Although the petitioner provided broad descriptions for the beneficiary's duties in the United States and abroad, those descriptions fail to specify any of the beneficiary's daily duties. It is noted that the actual duties themselves 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). The director shall instruct the petitioner to do more than merely recite the beneficiary's vague job responsibilities. The regulations require a detailed description of the beneficiary's daily job duties. *See* 8 C.F.R. § 204.5(j)(5). Thus, the petitioner must provide a specific list of actual duties that the beneficiary performed abroad and would perform in the United States under an approved petition and to indicate the amount of time devoted to each of the listed duties.

Finally, the director erroneously cited 8 C.F.R. § 214.2(l)(14)(ii)(E), a requirement that applies to I-129 nonimmigrant petitions. The petitioner in the instant matter filed a Form I-140 immigrant petition seeking to employ the beneficiary in the United States on a permanent basis. As such, the director's reference to a requirement specifically concerning nonimmigrant petitions is inappropriate and irrelevant.

The director is instructed to issue a request for evidence addressing the issues discussed above in an effort to establish the petitioner's eligibility to classify the beneficiary as a multinational manager or executive.

ORDER: The decision of the director dated March 23, 2005 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.