



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

JUL 18 2006

SRC 04 193 51167

IN RE:

Petitioner:

[REDACTED]

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 preference visa petition was denied by the Director, Texas 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 incorporated on April 3, 2001 in the State of Florida and is engaged in the business of operating child care and preschool facilities. It seeks to hire the beneficiary as its administration and marketing 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. The director determined that the petitioner failed to establish its ability to pay the proffered wage of the beneficiary and denied the petition.

On appeal, the petitioner and counsel¹ dispute the director's findings and submit sufficient documentation to overcome the single ground for the denial. Mainly, they properly point out that the director's entire conclusion was based on an erroneous interpretation of the petitioner's corporate tax return for 2004. Rather than focusing on line 30, which indicates that the petitioner's net income in 2004 was \$54,394, the director focused on the amount indicated in line 31, which represents the total tax, and discussed that amount as though it was the petitioner's net income. Thus, the director's conclusion was clearly based on the petitioner's tax liability, not its net taxable income, which exceeds the beneficiary's proffered wage of approximately \$40,000 per year.

Accordingly, the director's decision is hereby withdrawn. However, the petitioner may be ineligible to classify the beneficiary as a multinational manager or executive based on other issues that were not addressed by the director.

First, the record, as presently constituted, does not establish that the beneficiary would be employed in a managerial or executive capacity as defined in sections 101(a)(44)(A) and (B) of the Act, respectively.

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). Although the director issued a request for additional evidence (RFE) on April 4, 2005 instructing the petitioner to provide a detailed list of the actual duties the beneficiary would perform under an approved petition, the petitioner's response only provides a general overview of the beneficiary's responsibilities. Despite the general indication that the beneficiary's discretionary authority fits the definitions of managerial or executive capacity, these definitions are meant to serve only as guidelines to be applied to a specific list of duties. Where, as in the instant case, the petitioner fails to provide Citizenship and Immigration Services (CIS) with a specific list of duties, the AAO cannot affirmatively conclude that the beneficiary primarily performs qualifying tasks. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature;

¹ While the beneficiary does appear to have been an agent for the petitioner, there is no evidence in the record that the beneficiary authorized counsel to represent or otherwise enter her appearance on behalf of the petitioner in this proceeding. Specifically, the Notice of Entry of Appearance as Attorney or Representative (Form G-28) submitted by counsel in this matter contains no reference to the petitioner. The Form G-28, dated March 21, 2006, only authorizes counsel to enter her appearance on behalf of the beneficiary, not the petitioner. As the beneficiary of a visa petition is not a recognized party in a proceeding, the attorney for the beneficiary may not be recognized. 8 C.F.R. § 103.2(a)(3); 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, while the assertions made by counsel may be addressed, they will not be given any weight in this proceeding.

otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Second, the record is equally ambiguous with regard to the beneficiary's overseas employment. As such, the AAO cannot conclude that the beneficiary was employed overseas in a qualifying capacity for one out of three years prior to his entry to the United States as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(B).

Therefore, while the AAO will withdraw the director's decision, the record as presently constituted does not warrant an approval of the petition. Accordingly, the case will be remanded for a new decision, which shall take proper notice of the issues discussed above. The director is instructed to issue another RFE to allow the petitioner an additional opportunity to address the deficiencies specified above as well as any other factors the director deems relevant in determining the petitioner's eligibility for the immigration benefit sought.

ORDER: The decision of the director dated October 26, 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.