

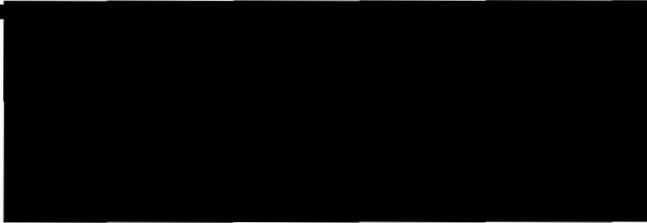
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship  
and Immigration  
Services

B4



FILE: [REDACTED]  
SRC 04 166 53006

Office: TEXAS SERVICE CENTER Date: MAR 31 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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner was established in 2001 in the state of Florida. The petitioner is engaged in the compilation and classification of various articles 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. The director denied the petition based on the determination that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel for the petitioner disputes the director's finding and states that a brief would be submitted within 30 days. On February 12, 2006, the AAO sent a fax to counsel. The fax advised counsel that no evidence or brief had been received in this matter and requested that counsel submit a copy of the brief and/or additional evidence, *if in fact such evidence had been submitted*, within five business days. In response, counsel signed the AAO's fax and checked the box that indicated that a brief had not been filed as originally indicated in the Form I-290B. Although counsel supplemented the fax with a brief, the brief is dated February 17, 2006, thereby indicating that it was written in direct response to the AAO's fax. It is noted that the AAO specifically cautioned counsel that the regulations do not permit an open-ended or indefinite period in which to file a brief and clearly stated that any brief and/or evidence submitted in response to the AAO's facsimile would not be accepted as a timely filed brief. As the record clearly shows that neither the brief nor the evidence attached thereto was filed prior to the AAO's issuance of the facsimile discussed herein, the AAO deems the additional submissions as untimely filed and need not consider them in rendering the instant decision.

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or statement of fact in this proceeding, the appeal must be summarily dismissed.

Notwithstanding the summary dismissal of the petitioner's appeal, the record shows that two L-1 nonimmigrant petitions were approved on behalf of the beneficiary. However, it should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by Citizenship and Immigration Services (CIS) than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that CIS approves some petitions in error).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.