



U.S. Citizenship
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FILE: [REDACTED]
SRC 04 017 53754

Office: TEXAS SERVICE CENTER Date:

OCT 05 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)

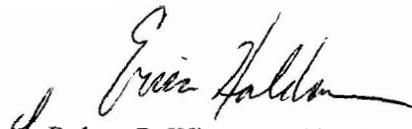
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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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, 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 visa petition 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 is engaged in providing architectural consulting services. The petitioner seeks to employ the beneficiary as its architect.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) the beneficiary had been employed abroad or would be employed in the United States in a primarily managerial or executive capacity; or (2) a qualifying relationship existed between the foreign and United States entities at the time of filing.

On Form I-290B, Notice of Appeal, filed by the petitioner on August 23, 2005, the petitioner contends:

Your decision was based on unclear facts which can be proven on our part that both [c]ompanies belong to the same owners – in Venezuela and the United States; also, the beneficiary has a manager/executive position which can be detailed in the [percentage] of work spent at the job and the responsibilities involved in order to maintain the operation of the business in the United States, even though [the beneficiary] is an [a]rchitect as a profession and conduct some of the work in the field.

The petitioner requested an additional ninety days from the time of filing the appeal within which to submit an appellate brief and documentary evidence. As of this date, no additional evidence has been submitted. On September 13, 2006, the AAO attempted to send a notice to the petitioner via facsimile requesting the petitioner's appellate brief and evidence, however the two facsimile numbers noted in the record were either disconnected or no longer in service. As it is now more than one year after the appeal date, the record as presently constituted will be considered complete.

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.

Upon review, the AAO concurs with the director's decision. The petitioner's general objections to the director's denial, without specifically addressing the beneficiary's eligibility for the requested immigrant classification, are insufficient to overcome the well-founded and logical conclusions the director reached based on a review of the record. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Contrary to the petitioner's assertion on appeal, the record contains inconsistencies and deficiencies in the ownership of the foreign and United States entities that prevent a finding of the claimed affiliate relationship. The petitioner initially claimed that it is a subsidiary of the foreign entity, yet in response to the director's request for evidence submitted two stock certificates, neither of which identified the foreign entity as a shareholder. In fact, Internal Revenue Service (IRS) Schedule K, Shareholder's Share of Income, Credits, Deductions, for the years 2002 through 2004 identify the beneficiary as the sole shareholder of the United States organization. The AAO notes that the record does not contain documentary evidence that the beneficiary is a majority shareholder of the foreign entity. 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). Absent clarification and documentation of the petitioner's true ownership, as well as evidence establishing the ownership of the foreign entity, the AAO cannot conclude that a qualifying relationship exists between the foreign and United States entities. Accordingly, the appeal will be dismissed.

The record also contains insufficient documentation corroborating the petitioner's claim that the beneficiary had been employed by the foreign entity and would be employed by the United States entity in a primarily managerial or executive capacity.

The record contains only a limited description of the job duties performed by the beneficiary as an architect of the foreign entity. The petitioner did not identify what "projects" the beneficiary managed, or explain how the beneficiary's responsibility of "releasing activities related to [architectural] design, project and supervision" constitutes employment in a primarily managerial or executive capacity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will 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).

Additionally, the vague job duties outlined by the petitioner with respect to the beneficiary's position in the United States company are not sufficient to substantiate the petitioner's claim that the beneficiary would occupy a position that is primarily managerial or executive in nature. The petitioner stated only that the beneficiary would "[r]elease daily activities," supervise and initiate projects, meet with clients and supervise employees. Again, the actual duties themselves reveal the true nature of the employment. *Id.* at 1108. Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *Id.* Moreover, the petitioner, noting in separate correspondence to the AAO that the beneficiary would hold the positions of architect and president, has not clarified the beneficiary's true role in the United States entity. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the above discussion, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity or would be employed by the United States organization in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO further notes that the petitioner has not established its ability to pay the beneficiary's proposed annual salary as required in the regulation at 8 C.F.R. § 204.5(g)(2). For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.