



U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

B4

[REDACTED]

FILE: [REDACTED]  
SRC 05 199 51279

OFFICE: TEXAS SERVICE CENTER Date: SEP 0

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:

[REDACTED]

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 a new decision.

The petitioner is a Florida corporation engaged in the business of real estate acquisition and property rentals. It seeks to employ the beneficiary as its president. 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 December 29, 2005,<sup>1</sup> the director denied the petitioner's Form I-140 based on the conclusion that the petitioner failed to establish its ability to pay the beneficiary's proffered wage. The director repeatedly referenced the beneficiary's compensation prior to the date the Form I-140 was filed. However, the petitioner must establish its eligibility at the time of filing; there is no burden on the petitioner to establish its eligibility prior to the filing of the petition. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the director cannot assume that the petitioner is unable to pay the beneficiary's proffered wage merely because the petitioner was not receiving the proffered wage either prior to or at the time of the filing of the petition. Rather, the petitioner is required to actually pay the beneficiary's proffered wage if and when she obtains lawful permanent residence. As such, the AAO hereby withdraws the director's statements that suggest the petitioner has the additional burden of establishing payment of the beneficiary's proffered wage prior to a favorable decision regarding the petitioner's Form I-140 and Application to Adjust Status (Form I-485).

Notwithstanding the director's flawed analysis, the documentation provided by the petitioner as of December 29, 2005 did not establish the petitioner's ability to pay.

However, the petitioner has submitted additional documentation on appeal, which is sufficient to overcome the director's denial. More specifically, the petitioner has submitted a number of its quarterly wage reports, its tax return for 2005, and the beneficiary's bi-monthly pay stub for a two-week period in June of 2005. While the AAO notes the petitioner's failure to complete Schedule E of its 2005 tax return, in the context of the petitioner's quarterly wage reports and the beneficiary's pay stub, the AAO has been able to determine that the beneficiary has been compensated a total of \$35,000 annually. In light of the total net income, which indicates that the petitioner had an additional \$8,951 available in 2005, the record sufficiently supports the petitioner's ability to pay the beneficiary's proffered wage at the time the Form I-140 was filed.

Despite the petitioner's ability to overcome the director's ground for denying the Form I-140, the record shows that the director failed to address a number of additional grounds of ineligibility, which suggest that a denial of the petitioner's Form I-140 is warranted notwithstanding the AAO's current remand.

---

<sup>1</sup> The record indicates that two additional denials were issued on March 13, 2006. One denial was titled "Second Notice of Denial," and the other decision was titled "Third Notice of Denial." All three denials, including the initial denial dated December 29, 2005, were identical. Although the second denial appears to have been issued subsequent to the petitioner's notification of an address change, the record is unclear as to the reason for the issuance of the third denial. The AAO notes that the petitioner submitted a timely appeal in response to the initial denial dated December 29, 2005. As no action appears to have been taken in response to either of the subsequent denials, the AAO will issue its current decision with regard to the director's originally issued decision.

First, the record does not establish that the beneficiary was employed abroad during the requisite time period in a qualifying managerial or executive capacity pursuant to the provisions specified in 8 C.F.R. § 204.5(j)(3)(i)(B). The record lacks any specific information with regard to the beneficiary's job duties during her employment abroad, therefore precluding the conclusion that the beneficiary's position required the performance of primarily qualifying duties.

Second, the record lacks sufficient documentation to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer as specified in 8 C.F.R. § 204.5(j)(3)(i)(C). Although the petitioner has provided a stock certificate indicating that the foreign entity owns 1000 shares of the U.S. petitioner's stock, Schedule E of the petitioner's tax return for 2004 indicates that the beneficiary owns 100% of the petitioner's common stock. 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). In the instant matter, the documentation submitted by the petitioner does not reconcile the considerable inconsistency in the record with regard to the petitioner's ownership and control.

Third, the record is void of evidence establishing that the petitioner had been doing business for one year prior to filing the petition pursuant to the provisions of 8 C.F.R. § 204.5(j)(3)(i)(D). Pursuant to 8 C.F.R. § 204.5(j)(2), doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." In the instant matter, the petitioner claims that its primary business activities involve the acquisition of real estate and property rentals. However, the record lacks any evidence of business transactions during the relevant 12-month period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Fourth, the petitioner has failed to comply with 8 C.F.R. § 204.5(j)(5), which requires that the petitioner provide an official offer of employment with a detailed description of the beneficiary's proposed job duties. In the instant matter, the petitioner's only description of the beneficiary's prospective position in the United States includes a brief list of the beneficiary's overall responsibilities. However, 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). Thus, without a detailed statement explaining what duties the beneficiary would actually perform on a daily basis, a determination cannot be made as to the nature of the duties the beneficiary would primarily perform.

Therefore, while the AAO will withdraw the director's decision, the record as presently constituted suggests that the petitioner is ineligible for the immigration benefit sought. Accordingly, the case will be remanded for a new decision, which shall take proper notice of the issues discussed above. The director shall issue another request for evidence addressing the relevant factors that pertain to the petitioner's eligibility in the instant matter.

As a final note, service records show the petitioner's previously approved L-1 employment of the beneficiary. With regard to the beneficiary's L-1 nonimmigrant classification, 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. Moreover, in this matter, the beneficiary's initial L-1 petition was only approved for one year to permit the opening of a new office in the United States. As such, the difference in the requirements for an immigrant petition and a new office nonimmigrant petition are even more significant.

Regardless, 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.

Furthermore, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

**ORDER:** The decision of the director dated September 13, 2004 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which shall be certified to the AAO for review.