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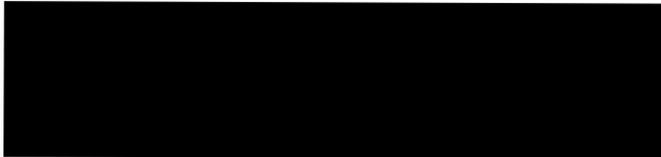
Petitioner:

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:



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 appeal will be summarily dismissed.

The petitioner was established in 2004 and is engaged in the retail of fashion jewelry. 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 January 19, 2006, the director denied the petition based on two independent grounds: 1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; and 2) the petitioner failed to establish its ability to pay the beneficiary's proffered wage. With regard to the first ground, the director specifically discussed the lack of information regarding the two employees who work under the beneficiary's supervision. The director further noted that based on the petitioner's organizational structure, the beneficiary is likely to perform non-qualifying duties on a daily basis. With regard to the second ground, the director noted that the petitioner failed to disclose the beneficiary's proffered wage, instead stating that the beneficiary's compensation would be in the form of dividends. The director discussed specific information provided in the submitted tax documentation and explained that the petitioner's claim regarding projected 2005 profit cannot be used to determine the ability to pay.

On appeal, counsel initially stated that a supplemental brief and/or additional evidence would be submitted within 30 days of the date of filing the Form I-290B. Counsel subsequently submitted a brief statement dated March 22, 2006. With regard to the first ground for denial, counsel merely paraphrased the statutory definition of executive capacity. While counsel specifically cited 8 C.F.R. § 204.5(j)(5), which explains the need for a detailed description of the beneficiary's proposed job duties, no additional information was provided to address the deficiencies pointed out by the director in the denial. Additionally, while not specifically discussed by the director, the petitioner's description of the beneficiary's duties is overly vague and discusses general responsibilities rather than specific duties the beneficiary would perform in an effort to meet those responsibilities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; 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). Without the necessary details establishing the actual duties the beneficiary would perform on a daily basis, the petitioner cannot successfully establish that the beneficiary would be employed in a qualified managerial or executive capacity.

With regard to the ability to pay, counsel states that the petitioner's 2005 tax return is not yet available and instead provides an unaudited profit and loss statement. However, as properly noted by the director, the petitioner has not quantified the beneficiary's proffered wage in terms of a specific dollar amount. Merely stating that the beneficiary will share in the petitioner's profits is insufficient, particularly if the petitioner does not generate profit. Based on the petitioner's claim, it appears that the beneficiary would receive no compensation at all if no profit is generated. The terms of 8 C.F.R. § 204.5(g)(2) discuss an offer of employment, which necessarily requires a specific compensation amount. Without this information, a determination cannot be made as to the petitioner's ability to pay. Despite the fact that the director specifically discussed the petitioner's failure to provide this fundamental information, counsel did not supplement the record with evidence or information to rectify this deficiency.

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.

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. [REDACTED] as the petitioner 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.

Furthermore, the record supports a finding of ineligibility based on additional grounds that were not previously addressed in the director's decision.

First, 8 C.F.R. § 204.5(j)(3)(i)(A) states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to filing the Form I-140. In the instant matter, the director specifically addressed this issue in the request for additional evidence (RFE) by instructing the petitioner to provide a detailed analysis of the beneficiary's daily activities during his employment abroad. However, the petitioner's description of the beneficiary's foreign employment is vague and fails to specify the actual duties the beneficiary performed on a daily basis. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. As the petitioner failed to provide a detailed account of the beneficiary's duties with the foreign entity, the AAO cannot conclude that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

Second, 8 C.F.R. § 204.5(j)(3)(i)(D) states that the petitioner must establish that it has been doing business for at least one year prior to filing the Form I-140. The regulation at 8 C.F.R. § 204.5(j)(2) states that 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." Although the record contains documentation in the form of invoices for August through December 2004, and February and April 2005, these documents do not cover the full 12-month time period prior to the filing of the Form I-140. As such, the AAO cannot conclude that the petitioner has satisfied the requirements discussed in 8 C.F.R. § 204.5(j)(3)(i)(D).

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). Therefore, based on the additional grounds of ineligibility as discussed above, this petition cannot be approved.

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