



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



B4

FILE:

SRC 04 170 51235

Office: TEXAS SERVICE CENTER Date: JUN 04 2007

IN RE:

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 initially approved on May 3, 2005. However, upon further review, the Director, Texas Service Center, determined that an approval may not have been warranted. Accordingly, a notice of intent to revoke was issued. The approval was subsequently revoked by the director in a decision dated July 19, 2006. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner was incorporated in the state of Texas on February 12, 2004. It claims to be engaged in the business of furniture retail and the rental of automobiles and seeks to hire the beneficiary as its business development director. 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 had failed to establish that it had been doing business in the United States for one year prior to filing this petition as required by 8 C.F.R. § 204.5(j)(3)(i)(D).

The petitioner subsequently filed an appeal using Form EOIR-29, which was accompanied by a filing fee of \$110. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

Title 8 C.F.R. § 103.2(a)(7)(i) requires that Citizenship and Immigration Services (CIS) reject any petition or application filed with the incorrect filing fee. Likewise, 8 C.F.R. § 103.3(a)(2)(i) requires the affected party to file an appeal using Form I-290B. In this case, the petitioner filed an appeal using Form EOIR-29, Notice of Appeal to Board of Immigration Appeals from a Decision of an INS Officer,¹ and submitted the incorrect filing fee of \$110.² While the AAO acknowledges the director's improper instructions suggesting that the petitioner use Form EOIR-29 instead of the Form I-290B in order to file the appeal with the AAO, 8 C.F.R. § 103.3(a)(2)(i) clearly provides the proper filing instructions, including the place of filing and the proper form that must be used. All petitioners were also properly informed of the change in filing fee when filing a Form I-290B with the AAO. *See* 70 Fed. Reg. 50957. The AAO does not have the discretion to consider an improperly filed appeal. Therefore, the appeal will be rejected based on its improper filing.³

ORDER: The appeal is rejected.

¹While counsel improperly filed the appeal using Form EOIR-29, it must be noted that the Board of Immigration Appeals does not have jurisdiction over this matter. *See* 8 C.F.R. § 1003.1(b). The AAO properly has jurisdiction over this matter. The authority to adjudicate appeals of employment-based immigrant petitions is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). **The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv).**

²The filing fee for an appeal to the AAO became \$385.00 on September 28, 2005. 70 Fed. Reg. 50957 (Aug. 29, 2005).

³It should be noted that, according to the Texas Comptroller of Public Accounts, the petitioner forfeited its corporate privileges in Texas on January 6, 2006 due its failure to satisfy all state tax requirements. As such, the petition would be subject to automatic revocation without prior notice even if it had not been revoked based on the grounds of ineligibility discussed in the director's decision. *See* 8 C.F.R. § 205.1(a)(3)(iii)(D).