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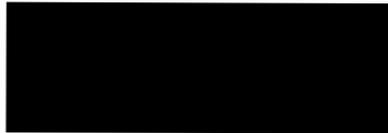


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FILE: [REDACTED]  
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Office: TEXAS SERVICE CENTER Date: MAY 02 2007

IN RE: Petitioner:  
Beneficiary:

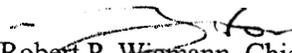


PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 dismissed.

The petitioner is a Florida corporation engaged in clothing retail. 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. The director denied the petition based on the following independent grounds of ineligibility: 1) the Form I-140 was deficient, as it was filed by the beneficiary rather than by the petitioning entity on behalf of the beneficiary; and 2) the petitioner provided inconsistent evidence regarding its ownership, thereby failing to establish that it has a qualifying relationship with the beneficiary's foreign employer.

On appeal, the beneficiary submits a statement on behalf of the petitioner explaining the reasons for the deficiencies cited in the director's decision.

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 and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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.

The first issue in this proceeding is whether the petitioner's Form I-140 was deficient as asserted in the denial.

Subsequent to initial review, the director issued a request for additional evidence (RFE) dated December 21, 2005. The director specifically noted that the petitioner did not fully complete Parts 5 and 6 of the Form I-

140 and instructed the petitioner to provide a response for each question that applies and to place an "N/A" for all questions that are not applicable to the petitioner.

In response, the petitioner resubmitted the second page of the Form I-140, which included the parts in question. The petitioner was identified as "self," implying that an individual other than an employer was petitioning on behalf of the beneficiary. Accordingly, Part 5, Item 2, which addresses information regarding an employer petitioner, was marked "N/A," or not applicable.

In a decision dated March 21, 2006, the director determined that the visa petition was deficient in its filing, as it was filed by the beneficiary on her own behalf contrary to the pertinent regulations requiring a United States employing entity to file the petition. *See* 8 C.F.R. §§ 204.5(j)(1) and 204.5(j)(3)(i). The director further stated that while the beneficiary may act as the petitioner's legal representative, she may not petition for herself under this visa classification.

On appeal, the beneficiary, on behalf of the petitioner, explains that the petition was deficient as a result of the inadequate counsel who assisted the petitioner in providing the response to the RFE. However, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

In the present matter, the record lacks evidence to show that the three requirements discussed above have been satisfied. Therefore, the AAO cannot accept the petitioner's attempt to alter and supplement the original Form I-140 with additional information, which had been previously requested in the RFE and could have been provided prior to the denial. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Based on the petitioner's failure to provide the necessary information specified in the RFE, the director's denial was warranted. The beneficiary's claims on appeal do not overcome this initial ground for denial.

The other issue in this proceeding is whether the petitioner provided adequate documentation to establish that it has a qualifying relationship with the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

*Affiliate* means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

\* \* \*

*Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The petitioner's initial submissions did not clarify the nature of the U.S. entity's relationship with the beneficiary's foreign employer. Accordingly, this issue was promptly addressed in the RFE, which instructed the petitioner to provide information regarding the ownership of the U.S. entity and the beneficiary's foreign employer. The petitioner was specifically asked to provide documentation showing the exchange of funds for issuance of stock.

In response, the petitioner provided the following documentation:

1. A stock certificate showing that 100 shares of the U.S. entity's stock were issued to the beneficiary's foreign employer on April 30, 2004.
2. Bank documentation showing that a fund transfer in the amount of \$10,000 took place on August 12, 2004 with funds leaving the account of the beneficiary's foreign employer and being transferred to the account of the U.S. entity.
3. The petitioner's Articles of Incorporation in which Article IV shows that the U.S. entity is authorized to issue 100 shares of stock at a par value of \$1.00 per share.
4. The petitioner's 2005 tax return, including Schedule E, which identifies the beneficiary as the owner of 100% of the U.S. entity's common stock.

In the denial, the director concluded that the petitioner provided inconsistent documentation regarding the U.S. entity's ownership, thereby failing to establish the existence of a qualifying relationship with the beneficiary's foreign employer.

On appeal, the petitioner provides supplemental documentation showing that the 2005 tax return has been amended to reflect the claim that the beneficiary has no direct ownership interest in the U.S. entity. However, the AAO notes that the amended tax return is not contemporaneous evidence that effectively resolves the inconsistency initially created when the original tax return was completed. Rather, the amendment is merely an extension of the petitioner's claim, which is a mere response to the director's adverse findings. The remainder of the record lacks the necessary documentation to resolve the inconsistency. While the AAO takes note of the bank documentation discussed in No. 2 above, there is no clear indication that the fund

transfer, which took place in August of 2004, reflects the sale of shares, which were issued in April of 2004, or four months prior to the fund transfer. Furthermore, Article IV of the U.S. entity's Articles of Incorporation indicates that the company's stock is valued at \$1.00 per share. Thus, 100 shares of stock would be valued at \$100. The fund transfer, however, was in the amount of \$10,000, a sum much greater than the value of 100 shares of the petitioner's stock. As such, the AAO cannot deem the fund transfer as contemporaneous evidence of the foreign entity's alleged purchase of the U.S. entity's stock. Consequently, the petitioner has failed to establish that a qualifying relationship existed between the U.S. entity and the beneficiary's foreign employer at the time the Form I-140 was filed.

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)(B) 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 arriving in the United States as a nonimmigrant. In the instant matter, the director specifically addressed this issue in the RFE by instructing the petitioner to provide a detailed analysis of the beneficiary's daily activities during her employment abroad. The petitioner's response consisted of a breakdown of the beneficiary's overall responsibilities on a broad scale. 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). While the petitioner's general list of responsibilities suggests a position that involved discretionary authority, the lack of a detailed list of daily activities precludes the AAO from finding that the beneficiary primarily performed duties of a qualifying nature during her employment abroad.

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." In the present matter, the Form I-140 was filed on December 1, 2005. Accordingly, the relevant one-year period during which the U.S. entity must establish it was doing business is from December 2004 through November 2005. However, in response to the RFE, the U.S. entity submitted a letter dated February 17, 2006 and signed by the beneficiary in which the beneficiary stated that she came to the United States in January of 2005 in the L-1A nonimmigrant visa category and that for the first two months she conducted no business transactions and instead worked on establishing the office and making business contacts.<sup>1</sup> Thus, based on the beneficiary's own statement, the petitioner did not commence doing business until March of 2005 at the earliest and could not have been doing business as early as December of 2004.

Third, the regulation at 8 C.F.R. § 204.5(g)(2) requires that the petitioner establish its ability to pay the beneficiary's proffered wage. In the present matter, the Form I-140 indicates that the beneficiary would be compensated \$25,000 for her services. The record does not include sufficient documentation to establish the U.S. entity's ability to compensate the beneficiary the proffered wage.

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<sup>1</sup> The record shows that the beneficiary's L-1A visa, which was issued for the purpose of commencing the petitioner's business, was valid from January 5, 2005 to January 4, 2006. The beneficiary readily admits that the petitioner was not ready to commence doing business upon her arrival. As such, the petitioner's eligibility for the underlying L-1A nonimmigrant visa is questionable.

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 discussed above, this petition cannot be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.