



U.S. Citizenship
and Immigration
Services

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FILE:

SRC 05 097 51313

Office: TEXAS SERVICE CENTER

Date: MAY 02 2007

IN RE:

Petitioner:

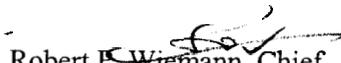
Beneficiary:

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 F. Wiermann, 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 2003 and is engaged in the business of importing cleaning products. It seeks to employ the beneficiary as its administrative manager. 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.

In a decision dated March 10, 2006, the director denied the petition, commenting on the petitioner's staffing structure and wages paid in 2004 and 2005. Based on these factors, the director determined that the petitioner lacked sufficient support personnel to relieve the beneficiary from having to primarily perform non-qualifying duties on a daily basis. The director properly referred to the well-established legal principal that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). While the director also commented on the petitioner's failure to provide its third and fourth quarterly wage reports for 2005, the AAO notes that for the purpose of determining the petitioner's eligibility, the petitioner's first quarterly wage report, which was submitted and discussed, is most relevant, as it demonstrates the petitioner's staffing composition at the time the Form I-140 was filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the director concluded that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity under an approved petition.

On appeal, the petitioner provides an initial written response suggesting that the petition may have been denied due to the petitioner's failure to provide certain documentation. Although the petitioner also claims that it never received a request for additional evidence (RFE), a review of the record shows that an RFE was in fact sent out to the petitioner's last-known address of record on May 18, 2005.¹ The record also contains the petitioner's response statement dated July 29, 2005, which had a copy of the RFE attached and in which the petitioner specifically restated portions of the director's RFE. As such, the petitioner's claim that the denial was the result of its never having received an RFE is contradicted by the evidence of record. Furthermore, careful review of the director's decision suggests that the denial was primarily based on the petitioner's lack of support personnel and, consequently, the petitioner's inability to relieve the beneficiary from having to primarily perform non-qualifying duties.

Although the petitioner has appealed the director's decision, it has provided documentation that fails to address any of the director's concerns. More specifically, the petitioner has provided copies of its tax returns and the beneficiary's W-2 statements for 2004 and 2005. However, these documents merely reaffirm the observations made by the director with regard to the petitioner's lack of support personnel. The petitioner also provides quarterly wage statements, payroll documents, and bank account statements from 2006. However, a

¹ On appeal, the petitioner states for the first time that it has a new mailing address that it wants Citizenship and Immigration Services (CIS) to use. The petitioner appears to indicate that this change of address is the reason it has not received any correspondence from CIS regarding this immigrant petition. It is important to note, however, that although the petitioner provided this new address to the Florida Department of State, Division of Corporations on July 6, 2004, it continued to use the original address of record in filing the Form I-140 on February 17, 2005. No explanation has been provided as to why the new address was not used when the petitioner filed the Form I-140.

petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Id.* Events that occurred after the Form I-140 was filed are irrelevant for the purpose of determining the petitioner's eligibility at the time of filing.

In the present matter, a summary of the petitioner's submissions on appeal suggests that the petitioner has neither addressed nor even acknowledged the observations that served as grounds for the director's decision denying the petition.

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. Inasmuch 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.

ORDER: The appeal is summarily dismissed.