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**U.S. Citizenship  
and Immigration  
Services**

ADMINISTRATIVE APPEALS OFFICE  
20 MASS., AVE. N.W., RM. 3000  
WASHINGTON, DC 20529

*B4*

FILE:

SRC 06 030 52474

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:

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 Texas corporation seeking to employ the beneficiary as its vice president. In Part 5, item 2 of the Form I-140 suggests that the petitioner is engaged in the business of selling car specific leather mounts for electronic devices. 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 failed to establish its ability pay the beneficiary's proffered wage and denied the petition.

On appeal, counsel disputes the director's findings and submits a brief in support of his arguments.

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 primary issue in this proceeding is whether the petitioner has the ability to pay the beneficiary's proffered wage.

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

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The

petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

In Part 6, item 9 of the Form I-140, the petitioner indicated that the beneficiary would be compensated at a rate of \$1,340 per week under an approved petition. The petitioner's supporting documents included unaudited financial statements for 2003 and 2004, quarterly wage reports for the first two quarters of 2005, and a number of its bank statements.

Based on an analysis of the submitted documentation, the director determined that the petitioner failed to meet the provisions cited in 8 C.F.R. § 204.5(g)(2) and denied the petition without issuing a request for additional evidence (RFE) to allow the petitioner an opportunity to overcome the perceived ineligibility.

On appeal, counsel contends that the director erred in failing to issue an RFE and claims that the petitioner's inventory is sufficient to establish its ability to pay the beneficiary's proffered wage. While the director may have committed a procedural error by failing to solicit further evidence pursuant to 8 C.F.R. § 103.2(b)(8), it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with this new evidence.

Furthermore, the director specifically commented on the insufficiency of unaudited financial statements in establishing the ability to pay. Therefore, the petitioner's submission of additional unaudited statements on appeal is equally as insufficient even if those statements discuss the petitioner's financial status during the relevant time period. While the AAO acknowledges that the petitioner need not establish that the beneficiary is paid the proffered wage prior to the petition's approval, the ability to pay the proffered wage must be established as of the date of filing the Form I-140. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In fact, the petitioner must maintain that ability until the beneficiary has adjusted status to that of permanent resident. *See* 8 C.F.R. § 204.5(g)(2). In the instant matter, the petitioner filed the Form I-140 on November 7, 2005. The petitioner has not submitted adequate documentation to reveal its financial status and its ability to pay as of that date. 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)).

While the petitioner has submitted a summary of its inventory as of November 30, 2005, there is no regulation or case law that recognizes a company's inventory as part of its net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. In the present matter, even if the AAO was to accept the petitioner's inventory as part of its assets, the record lacks any acceptable form of documentation to allow for a comprehensive comparison of the petitioner's claimed assets versus its liabilities. As such, the AAO cannot conclude that the petitioner has established its ability to pay the beneficiary's proffered wage of nearly \$70,000 per year.

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 capacity position for at least one out of the three years prior to entering the United States as a nonimmigrant. In the instant matter, the petitioner provided a letter dated October 6, 2005 stating that the beneficiary's position abroad as director of sales and marketing involved developing and launching product lines, developing and managing marketing campaigns, and developing and implementing business strategies.

Similarly, 8 C.F.R. § 204.5(j)(5) requires that the petitioner provide a detailed description of the beneficiary's proposed job duties in order to establish that the beneficiary's prospective employment will be within a managerial or executive capacity. In the October 6, 2005 supporting statement, the petitioner stated that the beneficiary's proposed position would involve the following responsibilities: hiring and managing personnel, opening markets, business development, and project management.

While the petitioner also discussed a number of the beneficiary's talents and business attributes, detailed descriptions of her daily job duties with regard to her position abroad and the proposed position in the United States were not provided. 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). The actual duties themselves reveal the true nature of the employment. *Id.* Based on the broad job descriptions provided, the AAO cannot conclude that the beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

Second, 8 C.F.R. § 204.5(j)(3)(i)(C) states that the petitioner must establish that it has a qualifying relationship with the beneficiary's foreign employer. In the present matter, the petitioner claims to have an affiliate 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;

The petitioner claims that the beneficiary's employer in Poland and the petitioner itself are both majority owned by a common parent entity, which is located in Germany. However, the only documentation provided to support this claim of common ownership is an incomplete Minutes of Meeting, which includes only the last page of a five-page document, and a blank stock certificate no. 1, which fails to identify the number of shares issued and to whom the shares were issued. 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)). As the petitioner failed to provide documents to corroborate its claim, the AAO cannot determine that a qualifying relationship exists between the U.S. petitioner and the beneficiary's employer in Poland.

Third, 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 petitioner provided several lengthy invoices reflecting transactions that took place in June, August, and September of 2005. However, since the Form I-140 was filed in November of 2005, the relevant one-year period for doing business is from November 2004 through October 2005. As such, these invoices, which account for only three months of a total 12-month period, are not sufficient to establish that the petitioner was doing business on a "regular, systematic, and continuous" basis. *See id.*

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.

As a final note, service records show the petitioner's previously approved L-1 employment of the beneficiary. The AAO notes that if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. 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).

Furthermore, 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).

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.