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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

BL

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAY 02 2008**
LIN 05 239 50994

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

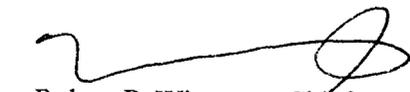
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

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, Nebraska Service Center. The petitioner subsequently appealed the director's decision to the *Administrative Appeals Office (AAO)*, where the director's decision was withdrawn and the matter was remanded for further consideration. The director has since requested and received additional submissions, which he reviewed and, in turn, reopened the matter in order to issue another adverse decision denying the petition. That matter has been certified to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a limited liability company organized in the State of Alaska. It seeks to hire the beneficiary as its co-owner/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.

The director initially denied the petition on the basis that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive position. While the AAO agreed with a number of the director's findings, it was determined that additional documentation should be requested prior to making a final determination. Accordingly, the matter was remanded with instructions to the director to request further documentation.

In an effort to comply with the AAO's instructions, the director issued a request for additional evidence dated March 12, 2007. The director reiterated the various anomalies previously discussed in the AAO's decision with regard to the foreign company's and U.S. petitioner's staffing as well as the lack of documentation establishing that the beneficiary was employed abroad for one full year prior to his non-immigrant entry. *See* 8 C.F.R. § 204.5(j)(3)(i)(B). Lastly, the director instructed the petitioner to provide documentation establishing its ability to pay the beneficiary's proffered wage as specified in 8 C.F.R. § 204.5(g)(2).

As noted in the director's well-reasoned decision, counsel for the petitioner provided a lengthy response that was reviewed and thoroughly analyzed in light of the regulatory requirements as well as the AAO's prior observations. While the director favorably found that the petitioner submitted adequate documentation establishing its ability to pay, he issued the following adverse findings: 1) the petitioner failed to establish that the beneficiary had the requisite one year of employment abroad with a qualifying entity; 2) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying capacity where the primary portion of the duties performed were within a managerial and/or executive capacity; and 3) the petitioner failed to establish that the beneficiary's prospective employment within the U.S. organization would primarily involve the performance of qualifying managerial or executive level tasks.

The director acknowledged the petitioner's response to the RFE, noting that the documentation was insufficient to overcome the adverse findings with regard to the three remaining issues dealing with the applicant's foreign and prospective employment. The director specifically noted that the petitioner resubmitted previously submitted job duties for the beneficiary's foreign and U.S. positions without supplementing these descriptions to address the deficiencies noted by the AAO. The director also found that the petitioner failed to resolve the irregularity within the foreign and U.S. entities' organizational structures where various employees were shown as simultaneously occupying multiple positions in both entities.

In summary, upon reviewing the record in its totality, the AAO finds no error in the director's determinations, which accurately address the numerous deficiencies in the instant record. As such, the AAO hereby adopts and affirms the director's decision dated September 4, 2007.

The petition will be denied for all of the director's stated reasons, with each considered as an independent and alternative basis for the decision. 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 director's decision dated September 4, 2007 is affirmed.