U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 23 2004

IN RE: Petitioner: [redacted]
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:

[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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The director denied the employment-based preference visa petition, and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the director for entry of a new decision. The director again denied the petition and certified that decision to the AAO. The director's decision will be affirmed. The petition will be denied.

The petitioner is a Colorado corporation that seeks to employ the beneficiary as its manager. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because the proffered position in the United States is not in an executive or managerial capacity. On appeal, counsel asserted that the director denied the petition without an opportunity for the petitioner to submit additional evidence as required by 8 C.F.R. § 103.2(b)(8). In its decision, the AAO noted that the record did not contain a statement from an authorized official of the petitioner, and that the director failed to request the missing evidence. The AAO, therefore, remanded the matter to the director for entry of a new decision, to include a request for evidence as described at 8 C.F.R. § 103.2(b)(8).

On May 14, 2003, the director issued to the petitioner a request for evidence, and he received the petitioner's response on August 4, 2003. The director again denied the petition because the proffered position in the United States is not in a managerial or executive capacity. The director also noted for the first time that the petitioner did not have the ability to pay the proffered wage. The director certified his decision to the AAO on September 15, 2003 and afforded the petitioner a 30-day opportunity to submit a brief or written statement to the AAO. As of this date, the AAO has not received any additional evidence in response to the certification notice. The record is, therefore, considered complete.

Upon review of the record, the director's decision is deemed correct. The position offered to the beneficiary is not in an executive or managerial capacity, and the petitioner has not established that it has the ability to pay the proffered wage. The director's decision to deny the petition shall, therefore, not be disturbed.

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 met that burden.

ORDER: The director's September 15, 2003 decision is affirmed. The petition is denied.