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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B4

[redacted]

DATE: NOV 10 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 that seeks to employ the beneficiary as its vice president/joint entrepreneur. 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 determination that the petitioner failed to provide evidence to show that it meets the initial filing criteria described at 8 C.F.R. §§ 204.5(g)(2) and (j)(3)(i).

On appeal, the beneficiary, on the petitioner's behalf, states that she is submitting "all corporate papers" and submits evidence of the petitioner's corporate existence and the beneficiary's employment abroad.

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.

Additionally, relevant portions of 8 C.F.R. § 204.5 require that the petitioner provide certain initial evidence in support of the Form I-140 at the time of filing. The regulation at 8 C.F.R. § 204.5(g)(2) states the following regarding initial evidence of the petitioner's ability to pay:

> (2) 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 either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The regulation at 8 C.F.R. § 204.5(j)(3)(i) pertains specifically to the petitioner that seeks to classify a beneficiary in the immigrant category of multinational manager or executive and lists the following as the initial required supporting evidence:

> (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
>
> (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
>
> (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
>
> (D) The prospective United States employer has been doing business for at least one year.

In the present matter, the director issued a decision dated May 29, 2009 in which he denied the petition based on the determination that the petitioner failed to comply with the evidentiary criteria listed above.

On appeal, the beneficiary, on the petitioner's behalf, submits various documents including a statement in which the beneficiary provided information about her place of residence, her date of birth, and her alien registration number. Supporting evidence also included the petitioner's corporate documents establishing its corporate existence in the State of [redacted], a number of invoices issued by the petitioner for consulting services that were provided to [redacted], and a number of foreign documents and their certified English language translations. With regard to the latter, the petitioner provided the beneficiary's translated marriage certificate, evidence of her foreign education credentials, and statements from the beneficiary's various foreign employers who attested to her employment with their respective enterprises.

After reviewing the above, the AAO finds that the petitioner's submissions fail to establish that the petitioner meets any of the above listed filing requirements.

First, with regard to the petitioner's submission of foreign letters of employment, the AAO notes that the petitioner failed to establish how these documents are relevant to the petitioner's eligibility. Merely

establishing that the beneficiary held employment abroad prior to her arrival to the United States is not sufficient. *See* section 203(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(3)(i). The regulations pertaining to the beneficiary's foreign employment are multifaceted in that they require the petitioner to establish that (1) the beneficiary was employed abroad; (2) the duration of the employment was for at least one year during a specific three-year time period, which is based either on the date the petitioner filed the Form I-140 or the date of the beneficiary's U.S. nonimmigrant entry, depending on whether the beneficiary is in the United States working for the petitioner, or an affiliate or subsidiary at the time of filing; (3) the relevant one year of employment was within a qualifying managerial or executive capacity; and (4) the foreign employer that employed the beneficiary in a qualifying capacity during the relevant time period has a qualifying relationship with the petitioning entity where the beneficiary will be employed.

In the present matter, the petitioner fails to identify which, if any, of the beneficiary's foreign employers shares a qualifying relationship with the beneficiary's proposed U.S. employer and provides no specific information about the job duties the beneficiary performed abroad. Therefore, the petitioner failed to establish that the beneficiary was either employed abroad in a qualifying managerial or executive capacity or that any of her foreign employers have a qualifying relationship with the U.S. petitioner.

Next, with regard to the sales invoices for consulting services that were provided by the U.S. petitioner, the AAO notes that all of the invoices are dated subsequent to the date the instant Form I-140 was filed. As the filing requirement at 8 C.F.R. § 204.5(j)(3)(i)(D) specifically instructs the petitioner to provide evidence that it was doing business for one year prior to the filing of the petition, invoices showing that the petitioner rendered services after filing are not relevant in establishing that the petitioner meets this filing requirement.

Lastly, the AAO notes that the beneficiary does not dispute or address the director's determination that the petitioner failed to provide evidence to establish that it has the ability to pay the beneficiary's proffered wage pursuant to the provisions of 8 C.F.R. § 204.5(g)(2). Therefore, in addition to the above grounds for denial, the petition will be denied on this basis as well.

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.