identifying [illegible] to prevent clearly unwarranted invasion of personal privacy

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[redacted]

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

DATE: FEB 0 9 2012 OFFICE: NEBRASKA 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:

[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.

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 summarily dismissed.

The petitioner is a California corporation that seeks to employ the beneficiary as its regional sales 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 denied the petition based on the determination that the petitioner failed to establish that the beneficiary was employed by the petitioner's foreign affiliate in a managerial or executive capacity.

On March 4, 2010, counsel, on behalf of the petitioner, filed an appeal seeking review of the director's decision. Counsel disagreed with the director's finding and indicated that an appellate brief would be submitted further expounding on the specific grounds for disputing the denial. The record shows that counsel did in fact submit a supplemental statement, which the AAO received on April 5, 2010 along with additional evidence, which included documentation showing the beneficiary's previously approved nonimmigrant visas, the beneficiary's job descriptions, and other supporting documents that had been previously submitted in connection with the current Form I-140 filing as well as prior Form I-129 filings through which the beneficiary had been accorded nonimmigrant status.

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.

If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the entity that employed the alien overseas, the petitioner must establish that the alien was employed by the entity abroad for at least one year *in a managerial or executive capacity* in the three years preceding entry as a nonimmigrant. 8 C.F.R. § 204.5(j)(3)(i)(B). Unlike the nonimmigrant L-1 visa, this immigrant visa classification makes no provision for an alien who was employed abroad as a non-managerial L-1B "specialized knowledge" employee. *Cf.* 8 C.F.R. § 214.2(l)(3)(iv) ("the work in the United States need not be the same work which the alien performed abroad").

In the present case, it is uncontested that the beneficiary was employed in Canada as a non-managerial sales representative from November 1999 to April 2005. The beneficiary entered the United States as an L-1B

specialized knowledge worker in May 2005 to continue his work as a sales representative for the United States subsidiary. The petitioner made no representation in either the initial petition or the response to the director's request for evidence that the beneficiary was employed abroad in a managerial or executive capacity. This employment history is supported by the beneficiary's resume.

On appeal, counsel claims that the beneficiary's employment as "regional sales manager" for the petitioner should satisfy the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B), however this employment was clearly in the United States and not abroad.

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.

After reviewing counsel's appellate brief, the AAO finds that counsel failed to specify any legal or factual errors made by the director in issuing the adverse decision. While it is clear that counsel disagrees with the director's decision and maintains that the beneficiary warrants the immigrant classification of a multinational manager or executive, none of the assertions in the appellate brief directly address the main issue in contention, i.e., that the beneficiary's foreign position as sales representative cannot be deemed as employment abroad in a qualifying managerial or executive position. Rather, counsel focuses primarily on restating the procedural history of the case, listing the factual history of the beneficiary's U.S.-based employment, and paraphrasing the relevant statutory and regulatory provisions.

Upon review, counsel failed to identify specifically any erroneous conclusion of law or statement of fact other than incorrectly contending that the beneficiary's employment in the United States meets the regulatory criteria cited at 8 C.F.R. § 204.5(j)(3)(i)(B), which requires the petitioner to establish that the beneficiary was employed *abroad* in a qualifying managerial or executive position. Counsel cites no facts in support of this contention nor points to a specific factual or legal error that resulted in the director's finding.

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.