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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

DATE: JUN 20 2012

OFFICE: TEXAS SERVICE CENTER



IN RE:



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:**

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 director of the Texas Service Center revoked the previous approval of the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the approval of the petition will be revoked.

The petitioner is engaged in the import and export of auto parts. The petitioner seeks to employ the beneficiary as its operations 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.

On February 8, 2010, the director revoked the petition concluding that the petitioner dissolved on September 14, 2007, and therefore, the I-140 is automatically revoked as of the date of approval. On February 26, 2010, the petitioner filed a motion to reopen and reconsider. On motion, the petitioner stated that the petitioner dissolved and the beneficiary purchased a company and thus, the beneficiary is eligible to port to self-employment pursuant to the American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No.106-313, 114 Stat. 1241 (AC21). On April 7, 2010, the director dismissed the motion concluding that the evidence submitted did not overcome the grounds stated in the denial. On May 6, 2010, counsel for the petitioner filed a Form I-290B to appeal the director's decision.

On appeal, counsel for the petitioner asserts that AC21 applies to the adjudication of the Form I-140 and the beneficiary is eligible to port to self-employment since the I-140 was approved and the Form I-485 has been pending for over 180 days pursuant to AC21, Section 204(j). Counsel explained that the petitioner dissolved and the beneficiary purchased a new company, [REDACTED] is a "manufacturer and distributor of quality professional automotive equipment, tools and toolboxes." The beneficiary is the owner and operations manager of the new franchise since 2006. Counsel states that the beneficiary's new position is in the same or similar occupational classification as the job listed on the original I-140. Counsel also states that the petitioner "had the intent to employ the Beneficiary and the Beneficiary had the intent to undertake the employment." Counsel further states that the petitioner dissolved due to "economic issues."

In 2000, Congress passed the American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No.106-313, 114 Stat. 1241 (AC21). Section 106(c) of AC21, 114 Stat. at 1254, amended section 204 of the Act by adding subsection (j):

(j) **JOB FLEXIBILITY FOR LONG DELAYED APPLICANTS FOR ADJUSTMENT OF STATUS TO PERMANENT RESIDENCE.** A petition under subsection (a)(1)(D) for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

Thus, according to AC21, if the Form I-140 has been approved and the Form I-485 has been filed and remained unadjudicated for 180 days or more (as measured from the Form I-485 receipt date), the approved Form I-140 will remain valid even if the alien changes jobs or employers as long as the new offer of employment is in the same or similar occupation. The I-140 petition did not "remain valid" since the approval of the petition was automatically revoked. In the absence of an approved petition, AC21 does not apply and the beneficiary is ineligible to port to a new job in the same or similar occupation. *See Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010).

Even if the approval of the petition had not been revoked and AC21 applied to this case, the new job position offered to the beneficiary has to be in the "same or similar occupational classification" as the job listed in the original I-140. On appeal, the beneficiary provides a list of job duties for the position of operations manager with Matco Tools as follows:

- Responsible for the administration of the U.S. entity and has the discretion over operations decisions for the company.
- Negotiates contracts on behalf of the corporation and deal with the U.S. supplier of goods.
- Responsible for expanding the company's operations through increased marketing efforts.
- Perform monthly physical inventory.
- Prepare and review operational reports and schedules to ensure accuracy and efficiency.
- Hire and terminate clerical and administrative personnel.
- Plan and supervise work activities.
- Plan study procedures and work problems.
- Gather and organize information on problems.
- Oversee communication with customers to answer questions and needs related to their orders, dispatching, location, management and distribution thereof.
- Supervision of purchase order and contracts' claims in accordance with company policy.
- Conduct a daily sales report, updating purchases, sales and promotions.
- Place purchase orders to different suppliers and maintain the status thereof.
- Make a weekly collections and payments' report.
- Prepare release of defective tools with their specifications and send them to the warranty department.
- At the end of the day prepare a purchase, sales, and special orders' report
- Instruct customers regarding the handling and use of each tool, to have a good use and compliance in their used function.

The beneficiary also explained that in the first year of operation, the business was located in the beneficiary's home address. The beneficiary also stated that in the second year of operation, the office was transferred to

On appeal, counsel submits the "[redacted]" that states that [redacted] desires to appoint the Distributor [the beneficiary] as an authorized [redacted] to sell and service the Products in a certain geographic area." The beneficiary also submits a "list of calls and potential customer list."

Upon review of the documentation submitted on appeal, the beneficiary's new position is not in the "same or similar occupational classification" as the job listed on the original I-140. The position offered to the beneficiary on the Form I-140 was as operations manager for a company engaged in the import and export of auto parts. According to the I-140, the petitioner had 6 employees and a gross annual income of \$68,668.60. The petitioner employed the beneficiary as Operations Manager, who in turn supervised an Administrative Manager, a Sales Manager, an Assistant Manager, Maintenance and an Accountant.

As noted above, the beneficiary provided a job description for the new position but did not provide sufficient documentation of the new business. For example, the beneficiary did not submit any tax documents of the new business. The beneficiary did not provide his salary with the new business. In addition, the beneficiary stated

that he moved the new business from his home to a new office location but he failed to provide a lease agreement to indicate the new office location. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In addition, it appears that the only employee of the new business is the beneficiary. Furthermore, the job description of the new job describes the duties of a sales representative rather than an operations manager as listed in the I-140. For example, in the original job duties submitted with the Form I-140, the beneficiary would spend 60 percent of his time "monitoring the activities of employees; establish performing and training standards; ensure compliance with all labor requirements." In addition, the beneficiary would "manage and supervise the Operational activities of the company." According to the new job description submitted on appeal, the beneficiary does not currently supervise any employees and performs all the day-to-day activities such as "negotiate contracts," "perform monthly physical inventory," "oversee communication with customers," "conduct a daily sales report, updating purchases, sales and promotions," and "prepare a purchase, sales, and special orders' report." The beneficiary will drive a route to meet with customers and sell them Matco products. A sales representative is not a position in a managerial or executive capacity.

The Department of Labor (DOL) uses the Standard Occupational Classification (SOC) system to group and classify jobs and occupations. The purpose of the SOC system is to classify workers into occupational categories to organize occupational data. The SOC system covers all occupations where work is performed for pay or for profit. Occupations are categorized based on the type of work performed. Additionally, certain occupations are also classified based on the skills, education and training required to perform the job. According to the I-140, the position offered to the beneficiary was as an operations manager. Although on appeal the beneficiary states that it is an owner and operations manager, the job description is more closely aligned to a sales representative.

Upon review of the evidence on appeal, the beneficiary's new position is not in the same or similar occupation and for this additional reason, he does not qualify for porting pursuant to AC21. On appeal, counsel states that "it would be unjust and an abuse of discretion for the Service to revoke the petition." The USCIS regulation at 8 C.F.R. § 205.1(a)(iii)(D) provides that the approval of a petition is revoked as of the date of approval upon termination of the employer's business in an employment-based preference case under section 203(b)(1)(C) of the Act. The petitioner was dissolved on September 14, 2007 and has failed to provide sufficient evidence to overcome the director's concerns. Accordingly, the appeal will be dismissed.

The approval of the petition will be revoked 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. The petition is revoked.