

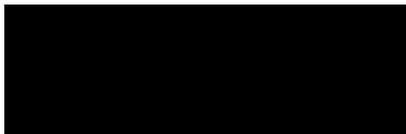
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: EAC 04 219 50351 Office: VERMONT SERVICE CENTER Date: AUG 26 2005

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:



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

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner was incorporated on January 2, 1987 in the state of New Jersey and is engaged in managing a project whose primary focus is the development of a storage electricity generation plant. It seeks to employ the beneficiary as its general 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 October 21, 2004, the acting director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. In reaching this conclusion, the acting director noted that the record does not "establish that the beneficiary's managerial experience and education qualifies him/her as an [e]xecutive/[m]anager while employed by your organization."

While the acting director's ultimate conclusion may be on point, there is no statute or regulation that mandates a petitioner to establish that the beneficiary possesses managerial experience or certain type of education in order to qualify as a multinational manager or executive. Rather, section 203(b)(1)(C) of the Act clearly states that the beneficiary's prior overseas employment must have been with the qualifying foreign entity; such employment must have continued for at least one of three years prior to the beneficiary's entry to the United States as a nonimmigrant; and such employment must have been in a managerial *or* executive capacity. There is no law or regulation requiring the prior employment to have been in a managerial capacity. Nor is the beneficiary required to have attained a particular level of education.

Furthermore, the acting director failed to issue a request for additional evidence. While the AAO acknowledges that this step is not required in the denial of every petition, the regulations at 8 C.F.R. § 103.2(b)(8) state that when the petitioner fails to submit initial evidence in support of the petition, CIS shall request that the petitioner submit the missing evidence and may request that the petitioner submit additional evidence. The regulation at 8 C.F.R. § 204.5(j)(3)(i) states that the following qualifies as initial evidence: 1) evidence of the beneficiary's qualifying employment abroad, 2) evidence of a qualifying relationship between the U.S. petitioner and the beneficiary's foreign employer, and 3) evidence that the petitioner had been doing business for one year prior to filing the petition. The regulation at 8 C.F.R. § 204.5(g)(2) states that proof of the petitioner's ability to pay the beneficiary's proffered wage is also deemed initial evidence.

In the instant matter, a review of the record indicates that the petitioner failed to provide the following required initial evidence: 1) information regarding the beneficiary's job duties abroad with a qualifying organization establishing that the beneficiary was employed abroad for the requisite time period in a qualifying managerial or executive capacity; and 2) evidence that the petitioner had been doing business for one year prior to filing the petition.

Accordingly, the AAO must withdraw the acting director's decision and remand the case. The director shall address the deficiencies of the prior decision by properly issuing a request for evidence, which will instruct the petitioner to submit all of the missing initial evidence. The director shall also instruct the petitioner to submit additional information including a detailed description of the beneficiary's proposed duties in the United States. *See* 8 C.F.R. § 204.5(j)(5). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would