

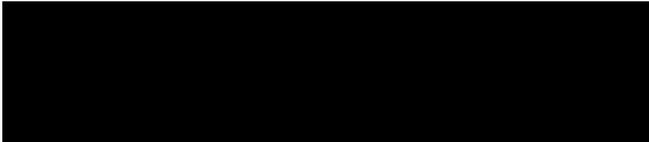
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

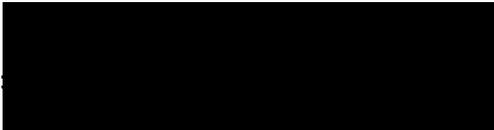
PUBLIC COPY



B4

FILE: LIN 04 171 50596 Office: NEBRASKA SERVICE CENTER Date: **OCT 28 2005**

IN RE: Petitioner:
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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a limited liability company organized under the laws of the State of Illinois that is doing business as a trading company. The petitioner seeks to employ the beneficiary as its volatility arbitrage trading and development manager.

The director denied the petition concluding that the petitioner had failed to demonstrate that: (1) the beneficiary was employed by the foreign company or would be employed by the United States entity in a primarily managerial or executive capacity; or (2) a qualifying relationship exists between the foreign and United States entities. Counsel submits a brief in support of the appeal.

To establish eligibility under section 203(b)(1)(C) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity.

Upon review, the AAO concurs in part with the director's decision, concluding that the petitioner has failed to demonstrate that the beneficiary has been employed abroad and would be employed in the United States in a primarily managerial or executive capacity. The AAO finds that the director incorrectly concluded that the petitioner did not establish the existence of a qualifying relationship between the foreign and United States entities. The AAO affirms the denial of the petition.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

Although counsel submitted a brief, he failed to adequately address the director's conclusions. A review of the record, particularly counsel's May 4, 2004 and October 15, 2004 letters, demonstrate that counsel submitted on appeal the same information and documentary evidence as that already contained in the record. Other than one brief paragraph¹, counsel's appellate brief is essentially a precise recitation of his two previous letters. Counsel also submitted the same documentary evidence as that already reviewed and considered by the director. Moreover, in his brief on appeal, counsel merely repeats one of the director's findings², rather than specifically identifying and explaining how the director erred in his findings. However, the director's

¹ Counsel merely changes language in the paragraph on appeal to indicate that "the beneficiary *occupies* the position of volatility arbitrage trading and development manager," rather than "*now occupies* the position." Counsel also deleted bold lettering contained in this paragraph.

² Counsel notes that the director concluded that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

decision provided a thorough analysis and specifically discussed deficiencies in the petitioner's evidence. Counsel fails to acknowledge, much less resolve the deficiencies discussed in the notice of denial. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

The AAO acknowledges that counsel referred to the director's decision as "extremely unfair" and stated on the Form I-290B, Notice of Appeal: "The Service (now) concludes that the L-1A Beneficiary's position abroad and in the United States was not primarily managerial in nature. The Petitioner disputes this and asserts that the Service's decision is erroneous." The petitioner's reliance on a previously approved nonimmigrant petition and vague assertion that the director's decision was unfair are insufficient to overcome the well-founded conclusions the director reached based on the evidence submitted by the petitioner in support of the instant petition.

It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by Citizenship and Immigration Services (CIS) than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States, and if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time review Form I-129 Petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that CIS approves some petitions in error).

Moreover, each nonimmigrant petition and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US vs. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd v. Sava*, 724 F. Supp. at 1103. In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In this matter, the director properly reviewed the record before him and found insufficient evidence to establish that the beneficiary had been or would be employed in a managerial or executive capacity, based on the petitioner's failure to provide a complete response to a clearly written request for evidence on this issue. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Moreover, if the previous nonimmigrant petitions were approved based on the same vague and unsupported assertions regarding the beneficiary's managerial and executive capacity that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N

Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 this burden.

ORDER: The appeal is summarily dismissed.