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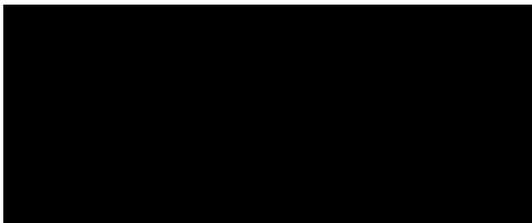
U.S. Department of Homeland Security
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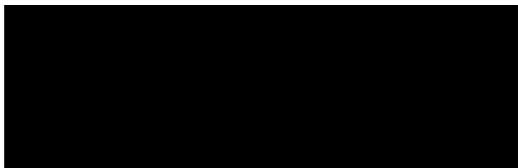
Office: VERMONT SERVICE CENTER

Date: FEB 01 2006

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 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 established in the Commonwealth of Puerto Rico. The petitioner is engaged in construction and 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.¹

On January 6, 2005, the director determined that the record does not contain sufficient documentation to establish the petitioner's eligibility to classify the beneficiary as a multinational manager or executive and denied the petition. The director specifically noted that the petitioner failed to provide its latest tax return

Whether the acting director's ultimate conclusion proves correct or not, the 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 overseas employment, 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. In addition, 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 any of the required initial evidence, including evidence of its ability to pay the proffered wage. The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." In the instant matter, the director failed to issue a request for the missing initial evidence.

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 specifically describing the beneficiary's proposed duties in the United States. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The director shall caution the petitioner that the actual duties themselves reveal the true nature of the employment. *Id.*

¹ It is noted that in a letter dated February 25, 2004, the petitioner referred to the petition as an L-1A petition to classify the beneficiary as a manager under 8 C.F.R. § 214.2(l). However, the subject of the instant proceeding is the petitioner's Form I-140 in which the petitioner seeks to permanently employ the beneficiary as a multinational manager or executive.

The director may also request any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

ORDER: The decision of the director dated January 6, 2005 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse, shall be certified to the AAO for review.