



U.S. Citizenship
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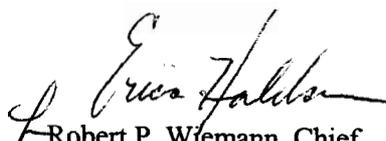
Petitioner:
Beneficiary:

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, Chief
Administrative Appeals Office

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

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 corporation organized under the laws of the State of Florida that is doing business as a wholesaler of chemicals to Venezuela and other Latin American countries. The petitioner seeks to employ the beneficiary as its marketing director.

The director denied the petition concluding that the petitioner had failed to demonstrate that: (1) a qualifying relationship existed between the foreign and United States entities; (2) the beneficiary had been employed by the foreign entity and would be employed by the United States company in a primarily managerial or executive capacity; or (3) it possessed the ability to pay the beneficiary's proffered annual salary.

On the Form I-290B, Notice of Appeal, counsel contends:

1. The Officer erred in holding that the Petitioner and the overseas company are not affiliates
2. The Officer erred in holding that the Petitioner failed to prove that the Beneficiary would be working in a managerial or executive capacity
3. The Officer erred in holding that the Petitioner failed to establish its ability to pay the prevailing wage
4. The Officer erred in denying the Petition without using a Request for evidence or Notice of Intent to Deny as required by the Yates Memo of February 16, 2005 (HQOPRD 70/2)

Counsel requests thirty days from the date of filing the appeal to submit an appellate brief. On March 2, 2006, the AAO sent counsel a facsimile requesting an appellate brief or additional evidence, and instructing that the facsimile should not be construed as an opportunity for counsel to prepare and submit a late brief or evidence. Counsel responded on March 7, 2006, indicating that he had not filed a brief or evidence within thirty days of the date of the appeal as previously noted on Form I-290B. Counsel, however, now submits a March 7, 2006 letter in support of the appeal. Counsel's newly prepared brief will not be accepted or considered herein. As noted by the AAO in its March 2, 2006 facsimile to counsel, "[t]he regulations do not allow an applicant or petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed." Accordingly, the record will be considered complete.

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 with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without identifying any specific errors on the part of the director, are insufficient to overcome the well-founded conclusions the director reached based on the evidence

submitted by the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Despite the petitioner's failure to satisfy the eligibility requirements for the requested visa classification, the AAO concurs with counsel's claim on appeal that the director erred in not issuing to the petitioner a request for additional evidence prior to her denial. 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." The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. In the instant matter, the director partially based her denial of the immigrant petition on the grounds that the petitioner had not submitted sufficient evidence of the beneficiary's job duties in the foreign and United States entities, as well as evidence of the employees managed by the beneficiary.

Even if the director committed a procedural error by failing to solicit further evidence, the most appropriate remedy is the appeal process itself. As discussed previously, the petitioner chose not to supplement the record on appeal within the permitted time period, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Furthermore, the director did not deny the petition based solely on a lack of required evidence. As determined by the director, the petitioner's description of the ownership and control of the foreign and United States entities, and the evidence provided, does not meet exactly the definitions constituting a qualifying relationship between the two entities pursuant to 8 C.F.R. § 204.5(j)(2). The AAO notes that this deficiency could not have been cured by permitting the petitioner an opportunity to submit supplemental evidence. As noted above, the director is not required to issue a request for evidence when there is evidence of ineligibility in the record. 8 C.F.R. § 103.2(b)(8).

The AAO recognizes Citizenship and Immigration Services' (CIS) prior approval of an L-1A nonimmigrant petition for the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by 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 of 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.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing L-1 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 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 prior nonimmigrant approval does not preclude CIS from denying an extension petition. See e.g. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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 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 v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions 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). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

Finally, 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).

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.

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.

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.