



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

JUN 29 2006

SRC 04 217 51729

IN RE:

Petitioner:

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:

[REDACTED]

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 appeal will be summarily dismissed.

The petitioner filed the instant 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 engaged in the sale of baby products, artifacts, and Latin groceries. The petitioner seeks to employ the beneficiary as its president.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity or would be employed by the United States entity in a qualifying capacity.

On the Form I-290B, filed on November 14, 2005, counsel for the petitioner contends:

1. Petitioner is a small business established in Florida for many years.
2. That the effects of several hurricanes have caused severe financial loss to local businesses, and for this reason Petitioner . . . require[s] additional time to gather information in support of this appeal.
3. That [Citizenship and Immigration Services (CIS)] erred and abused its discretion in stating that the Petitioner is 'an electrical apparatus and equipment enterprise' and obviously thereby attached the wrong template to the decision, as Petitioner is not in fact **an electrical apparatus and equipment enterprise**.
4. That [REDACTED] is not one of the applicants in this family, and obviously, [CIS] erred and abused its discretion in confusing this case with that of another.

Counsel requests sixty days from the date of filing the appeal to submit an appellate brief.

On May 3, 2006, a request was sent by the AAO to counsel via facsimile for a timely filed appellate brief or additional evidence. The record indicates that counsel responded via facsimile on May 11, 2006, noting that a brief had not been filed as indicated on Form I-290B. Counsel stated, however, that she had requested an extension to file the appellate brief by May 15, 2006. Counsel notes that she had not received a response granting the purported request. Counsel submits as evidence an undated motion in which she requested the additional time of sixty days. Counsel subsequently submits on May 15, 2006, an appellate brief and documentary evidence 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 with the director's decision and 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.

Counsel's appellate brief will not be considered herein. Other than the copy of a motion purportedly filed by counsel with the AAO, which incidentally is undated and does not reflect the date from which the extension is requested, there is no evidence in the record of counsel's request for permission to submit a brief by May 15, 2006.¹ As noted in the AAO's May 3, 2006 notice to counsel, the regulations do not grant the petitioner "an open-ended or indefinite period in which to supplement an appeal once it has been filed." In the same letter, the AAO clarified that the notice "should not be construed as requesting or permitting the petitioner and/or its counsel to submit a late brief and/or evidence in response to this request." Rather, as instructed by the AAO, counsel should provide evidence that a brief was filed within the period indicated on Form I-290B. Here, counsel requested on Form I-290B sixty days from the time of filing the appeal to provide a brief, thereby setting the due date at January 13, 2006. Even if counsel had requested an additional sixty days from this date, the appellate brief would have been due on March 14, 2006, sixty-two days prior to the date the instant appellate brief was submitted.

Counsel's claims on Form I-290B are not sufficient to overcome the director's findings that the beneficiary was not employed by the foreign entity in a primarily managerial or executive capacity and would not be employed in the United States as a manager or executive.² Counsel challenges the director's decision, noting that she incorrectly referenced the petitioner as "an electrical apparatus and equipment enterprise." Despite the director's incorrect reference to the petitioner's business operations in her October 13, 2005 decision, the decision demonstrates that the director properly considered the evidence in the record, particularly the job descriptions of the beneficiary's employment both in the United States and abroad. Counsel's blanket claim that the director's decision was in error is not sufficient to overcome the director's well-founded conclusions, which were based on her analysis of the beneficiary's job duties in the foreign and United States entities, as well as the petitioner's failure to provide evidence requested prior to her consideration of the instant issues. Counsel has not acknowledged on appeal the beneficiary's employment capacity in either the foreign or United States entity. 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 notes that even if it were to consider counsel's brief on appeal, counsel did not specifically address in her appellate brief the director's findings with regard to the beneficiary's former and present employment. Rather, counsel focuses on the director's misstatement as to the petitioner's business in the United States, and outlines the evidence submitted by the petitioner for the director's review and consideration. With regard to the beneficiary's employment, counsel states only that "at no time was the [beneficiary] involved in electronics." Counsel further notes CIS' approval of an L-1A nonimmigrant petition filed on behalf of the beneficiary. Counsel's reliance on a previously approved nonimmigrant petition and vague statements as to evidence previously submitted are insufficient to overcome the well-founded conclusions reached by the director based on the evidence submitted by the petitioner in support of the instant petition.

¹ The AAO notes that the record does not contain an original motion purportedly filed by counsel. Counsel did not provide on appeal verification of the purported filing with the AAO, such as a delivery confirmation from the United States Postal Service or by facsimile.

² Counsel reference on Form I-290B to [REDACTED] is unclear. The director does not address a [REDACTED] in her October 13, 2005 decision.

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 her 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.