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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 08 2008

SRC 05 800 10406

IN RE:

Petitioner:



Beneficiary:

PETITION:

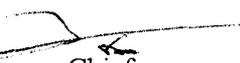
Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a Florida corporation, which was incorporated on December 4, 1995. The Form I-140 indicates that the petitioner is engaged in the business of nutrition supplies. The petitioner indicates its intent to employ the beneficiary as its sales 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. It is noted that, aside from an official offer of employment, the petitioner failed to provide any documentation in support of its Form I-140.

Accordingly, on January 31, 2005, the director issued an extensive request for additional evidence (RFE) discussing the missing initial evidence as well as other crucial evidence that the director deemed necessary in determining the petitioner's eligibility to classify the beneficiary as a multinational manager or executive.

After reviewing the petitioner's deficient response, which failed to fully address the issues discussed in the RFE, the director issued a decision dated July 22, 2005 denying the petitioner. The director determined that the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity. More specifically, the director noted that the petitioner failed to provide the requested list of the beneficiary's specific daily activities with a breakdown of time that would be spent performing each duty. The director also discussed the petitioner's failure to provide any information about the beneficiary's proposed subordinates.

Although counsel has submitted an appeal, his entire argument consists of paraphrasing the statutory definition of executive capacity and adding brief comments next to each of the four prongs of the definition. None of counsel's comments, however, address the director's specific findings or suggest how such findings were erroneous either factually or legally.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, 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.

Merely disagreeing with the director's conclusion, as counsel has done in the instant matter, is not synonymous with pointing to specific factual or legal errors. Therefore, a summary dismissal is warranted.

Furthermore, the record supports a finding of ineligibility based on additional grounds that were not previously addressed in the director's decision.

First, 8 C.F.R. § 204.5(j)(3)(i)(A) states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to filing the Form I-140. In the instant matter, the director specifically addressed this issue in the RFE by instructing the petitioner to provide a detailed analysis of the beneficiary's daily activities during his employment abroad. However, the petitioner failed to provide the requested information; nor did the petitioner provide any information regarding this issue when the Form I-140 was initially submitted. 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).

Second, 8 C.F.R. § 204.5(j)(3)(i)(C) states that the petitioner must establish that it has a qualifying relationship with the beneficiary's foreign employer. Again, the RFE instructed the petitioner to provide evidence showing common ownership and control for the U.S. petitioner and the beneficiary's foreign employer. *See Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In response, the petitioner provided a translation of the foreign entity's amended articles of incorporation showing that [REDACTED] owns 70% of the foreign entity. Although the petitioner provided its own articles of incorporation, which generally discusses the petitioner's stock and its board of directors, there is no specific information discussing the petitioner's ownership; nor did the petitioner provide other evidence indicating who owns a majority of its stock. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Third, 8 C.F.R. § 204.5(j)(3)(i)(D) states that the petitioner must establish that it has been doing business for at least one year prior to filing the Form I-140. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." Although the director instructed the petitioner to provide this vital information when issuing the RFE, the only documentation provided was the petitioner's 2003 tax return. However, a tax return does not show the frequency of the petitioner's sales transactions. As such, it cannot be relied upon to determine whether an entity is conducting business on a "regular, systematic, and continuous" basis. *See id.* As previously stated, 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).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the three additional grounds of ineligibility discussed above, this petition cannot be approved.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.