



U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAR 07 2007**
SRC 06 800 11628

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:
[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 preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner is a Florida entity that was incorporated in 1998. It currently claims to be a provider of janitorial contractor services. It seeks to employ the beneficiary as its president. 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.

On September 14, 2006, the director denied the petition on three independent grounds for ineligibility: 1) the petitioner failed to establish that the beneficiary was employed abroad in a managerial or executive capacity; 2) the petitioner failed to establish that it would employ the beneficiary in the United States in a managerial or executive capacity; and 3) the petitioner failed to provide documentary evidence of its claimed affiliation with the beneficiary's foreign employer. In reaching the conclusion regarding the petitioner's eligibility, the director noted that the petitioner responded to but failed to provide the information requested in the request for additional evidence (RFE) issued in April of 2006.

However, a closer review of the record shows that the director issued a notice of intent to deny (NOID) dated April 4, 2006 and that the petitioner's response reflected adverse information noted in the NOID, which was improperly issued, as it pertained to a visa category other than the one indicated in the petitioner's Form I-140. The AAO further notes that service records do not show the issuance of an RFE¹ to which the director referred in his decision.

While the AAO acknowledges that the issuance of an RFE 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, Citizenship and Immigration Services (CIS) shall ask the petitioner to 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. The director clearly determined that the petitioner failed to submit some of the evidence that is enumerated in 8 C.F.R. § 204.5(j)(3)(i). Therefore, given the absence of evidence of ineligibility in the record, an RFE was warranted in the present matter.

Accordingly, due to the service center's failure to comply with 8 C.F.R. §§ 103.2(b)(8) and 204.5(j)(3)(i), the AAO will withdraw the director's decision and remand the matter back to the director for further action. The director shall properly issue an RFE, which will instruct the petitioner to submit all of the missing initial evidence as well as any additional evidence the director deems necessary to adjudicate the present petition.

¹ Although the record of proceeding contains a copy of an RFE dated April 2, 2006, service records do not show that it was sent either to the petitioner or its counsel.

ORDER: The decision of the director dated September 14, 2006 is hereby withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which shall be certified to the AAO for review.