



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 01 2008

EAC 05 120 52101

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: SELF-REPRESENTED

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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On March 17, 2005, the petitioner filed a Form I-140. In Part 2 of the Form I-140, the petitioner indicates that it endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. However, the AAO notes that in Part 6 of the Form I-140, the petitioner indicates that the beneficiary would occupy the position of vice president. In addition, in response to the director's Notice of Intent to Deny (NOID), the petitioner indicates that it actually seeks 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 April 24, 2006, the director denied the petition based on the determination that the petitioner failed to respond to the NOID,<sup>1</sup> which the director issued on October 26, 2005. However, the record shows that a response to the NOID was received on November 18, 2005. Accordingly, the AAO hereby withdraws the director's finding and issues new findings that reflect derogatory information, which was recently uncovered in the process of reviewing this matter on appeal. The newly discovered information suggests that the petitioner does not have the requisite qualifying relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 204.5(j)(3)(i)(C) and, based on its dubious existence as a U.S. entity, that the petitioner cannot be the beneficiary's U.S. employer.

During the course of reviewing the petitioner's record on appeal, the AAO attempted to verify the validity of the petitioning entity by conducting a search of the New York Department of State Division of Corporations entity database. At the completion of the search, Kelar USA, Inc. was not found. Therefore, the AAO issued a notice dated March 5, 2008, informing the petitioner that additional derogatory information was being considered and that this information would lead to an unfavorable decision regarding the petitioner's eligibility to classify the beneficiary as a multinational manager or executive, unless the petitioner was able to provide credible documentation resolving the significant discrepancy. The AAO determined that despite the petitioner's claim that it was incorporated on December 15, 2000, there is no record of its current or prior existence. The petitioner was further notified that this discovery confirmed the AAO's belief that the petitioner provided fraudulent documentation to support its claimed existence. More specifically, the film and cash numbers contained in the filing receipt submitted by the petitioner have been altered and are fraudulent. Further contact with the New York Department of State, Division of Corporations led to the discovery of the actual entity whose filing receipt the petitioner used. This entity was Mundus Shipping, Inc., and it is no longer in active status. The petitioner was allowed thirty (30) days in which to address and overcome the intended basis for dismissing the appeal. However, more than two months after the AAO issued the notice of derogatory information, no response has been received, and the record has not been supplemented with any additional evidence.

In view of the above, the AAO concludes that the petitioner's existence has not been established. Therefore, there is no U.S. entity either to employ the beneficiary or to establish a qualifying relationship with the beneficiary's foreign employer. In other words, the basic foundation for the filing of a petition pursuant to section 203(b)(1)(C) of the Act is the existence of a U.S. entity. Here, this very foundation is missing.

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<sup>1</sup> The director referred to his prior correspondence as a request for evidence (RFE). It is noted for the record, however, prior to the final notice of denial the director issued a notice of his intent to deny, not an RFE.

Additionally, section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By filing the instant application and submitting the fraudulent evidence described above, [REDACTED] together and/or on behalf of the beneficiary, [REDACTED], has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Based on the above findings, the AAO will dismiss this appeal.

**ORDER:** The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.