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U.S. Citizenship
and Immigration
Services

B4

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 02 2009
LIN 07 058 50505

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner, allegedly a cargo transportation business, is a Florida corporation, which claims to be a subsidiary of the beneficiary's previous employer in Brazil. 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.

The director denied the petition concluding that the petitioner failed to establish that it will employ the beneficiary in a primarily managerial or executive capacity.

On appeal, counsel states the following in the Form I-290B:

In order to address [the] inconsistencies what were provided to the Petitioner by the person engaged in the unauthorized practice of law, the Petitioner herewith submits new evidence to help explain how the Principal Beneficiary will perform duties which are clearly managerial in nature. Because the Petitioner's [unauthorized practice of law] representative did not provide it with copies of any evidence submitted on its behalf, the Petitioner herewith submits evidence that it believes is currently not available to [U.S. Citizenship and Immigration Services (USCIS)].

Counsel also argues in an attached brief that "[d]ue to the lack of licensed legal counsel, Petitioner contends that based on the ineffective representation of counsel, it did not accurately explain the Principal Beneficiary's proffered job duties." Counsel submits evidence with his brief addressing these job duties.

It is noted that, on appeal, counsel does not contend that the director erred legally or factually in denying the petition. Counsel does not identify the unauthorized representative who purportedly prepared the petition. Likewise, counsel does not describe the circumstances surrounding the engagement of this individual, the preparation of the petition, or the preparation of the response to the director's Request for Evidence.

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.

Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed. While counsel gave an explanation for the petitioner's failure to submit proper evidence in support of its petition, it nevertheless failed to identify an

erroneous legal conclusion or factual statement in the decision for the AAO to consider on appeal. Consequently, the appeal must be dismissed.¹

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.

¹ On January 7, 2009 the Attorney General issued a precedent decision relating to ineffective assistance of counsel, superseding *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *affid*, 857 F.2d 10 (1st Cir. 1988). See *Matter of Compean, et al.*, 24 I&N Dec. 710 (A.G. 2009). In *Compean*, the Attorney General held that the Constitution affords no right to counsel or effective assistance of counsel to aliens in immigration proceedings under the Sixth Amendment or the Due Process Clause of the Fifth Amendment. *Id.* at 711-27. Although the Act and regulations also do not afford aliens a right to effective assistance of counsel, USCIS may, in its discretion, reopen proceedings based on the deficient performance of an alien's prior attorney. *Id.* at 727. *Compean* establishes three elements of proof and six documentary requirements that an alien must meet to prevail on a claim of deficient performance of counsel. *Id.* Although *Compean* addresses deficient performance of counsel claims in the context of motions to reopen removal proceedings, the decision also applies to claims of deficient performance raised on direct review. *Id.* at 728 n.6.

Despite this change, the AAO will evaluate this appeal under *Matter of Lozada*, the administrative precedent that was applicable at the time the instant appeal was filed on May 8, 2008. Under general rules of legal construction, a substantive, non-curative, adverse change in administrative rules is not to be applied retroactively unless the language of both the administrative rule and the statute authorizing the rule requires such a result. *Uzuegbu v. Caplinger*, 745 F.Supp. 1200, 1215 (E.D. La. 1990). In this matter, the petitioner did not properly articulate a claim for ineffective assistance of counsel under *Matter of Lozada*. A claim based upon ineffective assistance of counsel requires the affected party to, *inter alia*, file a complaint with the appropriate disciplinary authorities or, if no complaint has been filed, to explain why not. The instant appeal does not address these requirements. In fact, neither counsel nor the petitioner identifies the purported unlicensed and ineffective representative or explains the facts surrounding the preparation of the petition or the engagement of the representative. Accordingly, the petitioner did not articulate a proper claim based upon ineffective assistance of counsel, and the appeal will be summarily dismissed.