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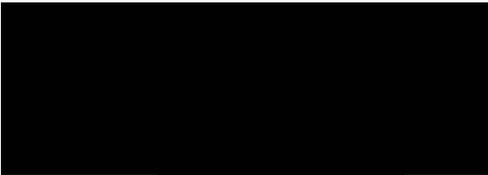
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER
LIN 08 058 51446

Date: SEP 04 2009

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, as required by 8 C.F.R. 103.5(a)(1)(i).

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 rejected.

The petitioner is a Delaware corporation that seeks to employ the beneficiary as its applications development 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.

Noting that the record was deficient, the director issued a notice dated April 11, 2008, requesting that additional evidence be submitted in support of the petition. After the petitioner failed to submit the requested evidence, the director denied the petition citing the petitioner's failure to respond to the request for evidence as the sole basis for denial. Thus, the petition was effectively dismissed for abandonment, pursuant to 8 C.F.R. § 103.2(b)(13)(i), which states the following:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

Pursuant to 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed. As there is no appeal from the director's denial, the petitioner's appeal must be rejected.

Moreover, even if the AAO were to consider the merits of the petitioner's appeal, it would nevertheless be dismissed, as it fails to overcome the director's ground for denial. Namely, counsel asserts that the director's decision was issued in error, as counsel did not receive the previously issued request for evidence. However, the evidence of record shows that counsel was not entitled to receive such document for two reasons. First, the issuance of a request for evidence or notice of intent is a discretionary matter to be determined by U.S. Citizenship and Immigration Services (USCIS). USCIS is not required to issue a request for evidence. Second, the record shows that a Form G-28, Notice of Entry of Appearance, was not filed by counsel at the time of filing the petition. Although the record contains an earlier Form G-28, dated August 14, 2007, that Form G-28 was filed by counsel on behalf of the beneficiary with regard to his Form I-485, Application to Register Permanent Resident or Adjust Status. The record shows that the earliest Form G-28 filed by counsel on behalf of the *petitioner* was dated August 29, 2008, thereby indicating that the notice was filed along with the appeal. Thus, even if the director was required to issue a request for evidence in the present matter, counsel would not have been entitled to a copy of such notice, as she had not given USCIS notice of her representation of the petitioner at the time the request for evidence was issued.

Additionally, with regard to any evidence or information that the petitioner failed to provide in response to the prior request for evidence, it is noted that the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Therefore, the AAO would not consider on appeal any evidence that the petitioner failed to submit in response to the request for evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Regardless, the record shows that the petition in the present matter was denied due to abandonment. As previously stated, no appeal lies from a petition that is denied on such ground. 8 C.F.R. § 103.2(b)(15).

ORDER: The appeal is rejected.