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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
and Immigration
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FILE:  OFFICE: TEXAS SERVICE CENTER

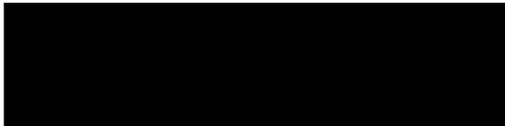
Date:

SEP 14 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew
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 claims to be a U.S. corporate entity that seeks to employ the beneficiary in the position of director. 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 determined that the petitioner failed to establish eligibility for the immigration benefit sought and denied the petition. Specifically, the director determined that because the beneficiary is currently in the United States in the H-1B rather than the L-1 nonimmigrant visa category, he does not qualify for classification as a multinational manager or executive.

While an independent review of the record indicates that a denial may be warranted in the present matter, the director's analysis is deficient in that it fails to articulate an identifiable basis for denial. As a threshold issue, the AAO notes that the beneficiary's classification in the H-1B nonimmigrant visa category does not preclude eligibility in the present matter. While the beneficiary's nonimmigrant classification at the time the petition was filed may be an indicator as to the nature of the job duties the beneficiary would perform for the U.S. entity, the director must first determine that the beneficiary performs primarily non-qualifying tasks before concluding that he does not qualify for classification as a multinational manager or executive. *See* Section 203(b)(1)(C) of the Act. The director is also encouraged to focus on the eligibility requirements listed at 8 C.F.R. § 204.5(j)(3)(i), which address pivotal issues, including the beneficiary's time period of employment abroad and his employment capacity with a qualifying foreign entity, the petitioner's qualifying relationship with that foreign entity, and the petitioner's business activity in the United States during the one-year period prior to the date the Form I-140 was filed. Additionally, 8 C.F.R. § 204.5(g)(2) requires that the petitioner establish its ability to pay the beneficiary's proffered wage as of the priority date.

It appears that the director made an initial finding that the petitioner is not affiliated with a foreign entity that employed the beneficiary abroad prior to his employment with the U.S. entity. While the AAO finds that the director's observation was relevant and accurate, the director did not issue his adverse finding based on this observation.

Therefore, the AAO concludes that the denial is deficient as it is not based on any of the eligibility factors in the relevant statute and regulations. The director may either issue a notice requesting evidence of the petitioner's eligibility for the immigration benefit sought, or he may choose to deny the petition on the basis of the evidence that is currently in the record of proceeding.

ORDER: The decision of the director dated April 27, 2009 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.