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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B4

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:

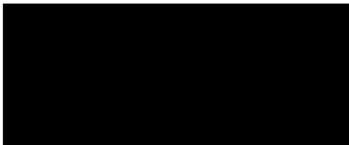
FEB 10 2011

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:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 was organized in the State of Delaware and is seeking to hire the beneficiary in the position of border operations 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 that it has a qualifying relationship with the beneficiary's foreign employer and denied the petition on that basis. On appeal, counsel submits a brief as well as additional evidence that overcomes the single ground that served as the basis for denial. As such, the AAO hereby withdraws the adverse decision.

Notwithstanding the favorable finding with regard to the sole basis for denial, the AAO finds that the record lacks sufficient evidence to establish that the petitioner is eligible for the immigration benefit sought on the basis of additional grounds that were not addressed in the director's decision.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

Additionally the regulation at 8 C.F.R. § 204.5(j)(3)(i) states that a petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

In the present matter, the petitioner has failed to establish that the requirements described at 8 C.F.R. §§204.5(j)(3)(i)(B) and (D) have been met. The petitioner also failed to establish that the beneficiary's proposed employment would primarily consist of tasks within a qualifying managerial or executive capacity. The record shows that on May 28, 2009 the director issued a request for additional evidence in which the petitioner was expressly instructed to provide supplemental descriptions of the beneficiary's employment with the foreign entity as well as the beneficiary's proposed employment with the petitioning entity. The petitioner's response, which included two letters dated June 26, 2009—one from the petitioning entity and the other from the foreign entity—indicates that a considerable portion of the beneficiary's time in both positions has been allocated to non-qualifying operational tasks. Without further information about the beneficiary's placement within each entity's organizational hierarchy and a comprehensive statement explaining how the beneficiary has been and would be relieved from having to perform non-qualifying tasks, it is the AAO's finding that the petitioner has not established eligibility for the immigration benefit sought.

Accordingly, the director is instructed to issue another request for evidence in an effort to address the AAO's findings. The director may also request any other additional evidence that he may deem necessary in order to establish the petitioner's eligibility to classify the beneficiary as multinational manager or executive.

ORDER: The decision of the director dated August 12, 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 to the petitioner, shall be certified to the AAO for review.