

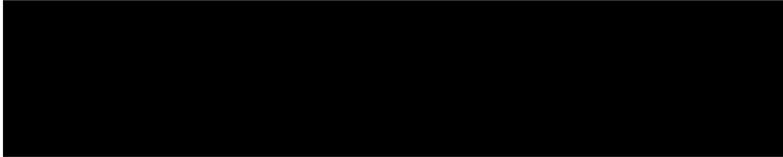
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B4

DATE: **APR 11 2012**

OFFICE: NEBRASKA SERVICE CENTER

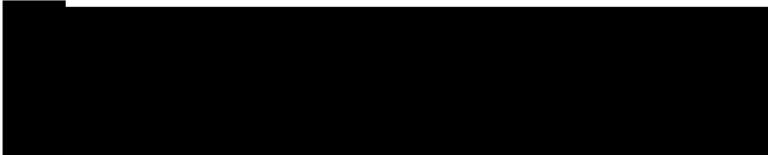


IN RE:



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 \$630. 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a biotechnology company that seeks to employ the beneficiary as its manager (medical/science research). 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.

On October 20, 2010, the director denied the immigrant petition determining that: (1) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; (2) the petitioner did not establish that the beneficiary has been employed outside the United States for at least one year in a managerial or executive capacity by a qualifying entity; and (3) the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

On November 22, 2010, the petitioner submitted the Form I-290B to appeal the director's denial. The petitioner marked the box at part two of the Form I-290B to indicate that a brief and/or additional evidence will be submitted to the AAO within 30 days.

Counsel for the petitioner submitted an appeal brief on December 17, 2010. Counsel states:

Upon review of the law and the record and the well presented decision of the USCIS Examiner who processed the I-140 petition in this case: It does appear that the beneficiary lacks the required element of having worked abroad for at least one year in the last three years – prior to coming to the U.S.

Because of this lacking element – in good faith, she concedes that the petition cannot be approved due to this technicality. As such, it would be moot to argue the other issues regarding denial – even if conceivably, she might prevail on these.

She will thus seek other viable alternatives available to her to acquire her immigrant visa.

As no additional evidence is presented on appeal to overcome the decision of the director and the petitioner concedes that the petition is not approvable, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.