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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 25 2012** OFFICE: TEXAS SERVICE CENTER FILE:

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

The petitioner is an Alabama corporation that seeks to employ the beneficiary as its chief executive officer. 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.

In support of the Form I-140 the petitioner submitted a statement dated January 6, 2009, which included relevant information regarding the petitioner's eligibility for the immigration benefit sought. The petitioner also provided supporting evidence, including the petitioner's financial and corporate documents as well as documents pertaining to the beneficiary's foreign employer.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a notice of intent to deny (NOID) dated April 10, 2009 informing the petitioner of various evidentiary deficiencies. Among the numerous deficiencies, the director determined that the record lacked evidence establishing that the petitioning entity had been doing business for one year prior to having filed the Form I-140 on February 12, 2009, per 8 C.F.R. § 204.5(j)(3)(i)(D).

The petitioner provided a response statement dated May 19, 2009 along with supporting documentation. In the response, the petitioner stated that it has been incorporated since April 2008 and has opened four store locations since then. Supporting evidence included tax documents, bank statements, and two management fee contracts in which the petitioner was identified as the company providing the management services.

After reviewing the record, the director concluded that the petitioner failed to establish that the petitioner had been doing business for the requisite one-year time period prior to filing the petition and therefore denied the petition in a decision dated July 24, 2009.

On appeal, counsel challenges the director's decision, claiming that the work the beneficiary did prior to incorporating the petitioning entity should be considered in determining the duration of the petitioner's period of doing business.

The AAO finds that counsel's statements are not persuasive and fail to overcome the director's denial. It is noted that the petitioner's submissions have been reviewed. All relevant documentation that pertains directly to the key issue in this matter will be fully addressed in the discussion below.

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.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The primary issue to be addressed in this proceeding is whether the petitioner has provided sufficient evidence to establish that it had been doing business for the requisite one-year period prior to filing the petition.

As previously noted, 8 C.F.R. § 204.5(j)(3)(i)(D) states that in order to file a petition for multinational manager or executive, the petitioner is required to submit evidence showing that it has been doing business for at least one year prior to filing the Form I-140. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

The director determined that in light of the fact that the petitioner did not file its articles of incorporation until April 1, 2008 it could not have been doing business for at least one year as of February 12, 2009, which was the date the petitioner filed the Form I-140. The director's underlying reasoning indicates that the petitioner could not have been doing business prior to the date it was established as a legal entity.

On appeal, counsel asserts that when a statute or regulation uses the word "year," rather than expressly stating 365 days, the legal intent was to allow a more liberal interpretation to be applied to the word "year" so that the full 365 days are not required in order to represent one year. Counsel points out that the word "year" is used in 8 C.F.R. § 204.5(j)(3)(i)(D). Counsel also urges the AAO to refrain from relying on the petitioner's date of incorporation as an indication of the time period during which the petitioner commenced doing business and asks the AAO, instead, to consider the work conducted by the beneficiary prior to the date the petitioner became an official legal entity.

The AAO finds that there is no statute, regulation, or precedent case law that supports any of counsel's assertions. In no way does the AAO accept that ten months and seventeen days should be interpreted as one year. Such an interpretation goes beyond the written regulatory provisions, which counsel attempts to circumvent by substituting her own unsupported definition for the term "year" which would allow the petitioner more favorable treatment given the specific set of circumstances. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel

do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, the AAO notes that any time period prior to the date of the petitioner's corporate existence cannot be calculated toward the regulatory time period that is mandated by 8 C.F.R. § 204.5(j)(3)(i)(D), which requires the petitioner to establish that it, not the beneficiary, had been doing business. Any steps the beneficiary had taken to set up the petitioner as a business entity will not be considered. Furthermore, the AAO notes that even though the petitioner filed its articles of organization on April 1, 2008, in no way is the filing of this document synonymous with the regular, systematic, and continuous provision of goods and/or services. Where, as in the present matter, the petitioner claims to function as a retail operation, the petitioner must provide documentation to establish that it has been engaged in the regular, systematic, and continuous provision of goods and/or services for a period of one year. Merely establishing that the petitioner existed as a legal entity for a certain time does not lead to the conclusion that the legal entity had been doing business since the time it legally came into being.

While the petitioner submitted bank statements, tax documents, and utility bills in an effort to establish that it meets the provisions of 8 C.F.R. § 204.5(j)(3)(i)(D), these documents are not sufficient as they fail to document actual business transactions between the petitioner and a third party. Although the petitioner did provide two management fee contracts, which show that the petitioner was contracted to provide management services, neither contract establishes that the petitioner had been doing business as of February 12, 2008, which would be factually impossible, as the petitioner did not exist as a legal entity prior to April 1, 2008.

In light of the deficiencies described above, the AAO finds that the petitioner had not been doing business for one year prior to filing the Form I-140. Therefore, this petition cannot be approved.

Additionally, while not addressed previously in the director's decision, the record lacks sufficient evidence to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The statement submitted in response to the NOID confirming the beneficiary's foreign employment contains no information about the job duties the beneficiary performed or the employees he may have managed. Without this relevant information, the AAO is unable to conclude that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional ground of ineligibility discussed above, this petition cannot be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 sustained that burden.

ORDER: The appeal is dismissed.