



U.S. Citizenship
and Immigration
Services

B4

DATE: **DEC 08 2012**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 engaged in “import-export” operations, and it seeks to employ the beneficiary as its Executive 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.

The director denied the petition on September 27, 2011, concluding that: (1) the petitioner failed to establish that the beneficiary’s employment abroad was within a qualifying managerial or executive capacity; (2) the petitioner failed to establish that the beneficiary’s proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity; (3) the petitioner failed to establish that it has a qualifying relationship with the foreign entity that employed the beneficiary abroad; (4) the petitioner failed to establish it has been doing business for at least one year prior to filing Form I-140; and, (5) the petitioner failed to establish that it has the ability to pay the proffered wage to the beneficiary.

The director also noted in the decision that the petitioner failed to submit evidence that was specifically requested in the director’s notice of intent to deny (“NOID”).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

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.

Upon review, the AAO agrees with the director's decision and will affirm the denial of the petition.

On July 14, 2011, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity to provide it for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8). Specifically, the director requested *inter alia* evidence of the qualifying relationship between the petitioner and the beneficiary's foreign employer such as proof of stock purchase, annual report, minutes of meeting regarding stock ownership, stock certificates, stock ledger, articles of organization, and, a list of owners. The director noted in the denial decision that the petitioner provided documents but the "evidence provided little clarifying information regarding ownership."

The NOID also requested additional information regarding both the job position held by the beneficiary with the foreign employer and the proffered position, including a letter from the foreign company and the petitioner outlining the job duties, percentage of time spent on each duty, the employees the beneficiary supervised or managed and will supervise or manage with a job description and educational level of the subordinates, and a detailed organizational chart for both companies.

In the denial decision, the director noted that the beneficiary's foreign company submitted a letter; however, the letter failed to provide sufficient information regarding the duties performed by the beneficiary, and a percentage break down of time spent on each duty. In response, the petitioner failed to provide the requested evidence. The director denied the petition after noting that the petitioner failed to submit the requested evidence.

In regards to the U.S. position, the director noted that the petitioner did not provide a definitive statement that described the job duties of the beneficiary with a percentage break down of time spent on each duty. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). In addition, the director specifically requested a copy of the petitioner's organizational chart which was not submitted by the petitioner in the response. The petitioner submitted the organizational chart on appeal.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically requested by the director, the petitioner did not provide

the requested evidence. The petitioner's failure to submit this information cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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. Due to the failure to provide the requested evidence, the petitioner has not met its burden.

The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is now entitled to the status sought.

ORDER: The appeal is dismissed.