

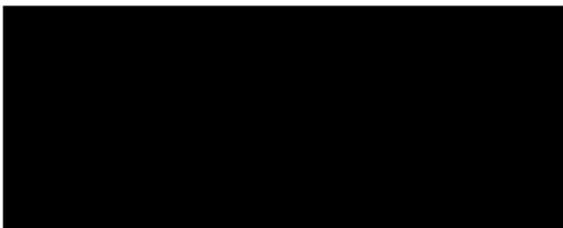
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

**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: **FEB 15 2012**

OFFICE: TEXAS SERVICE CENTER

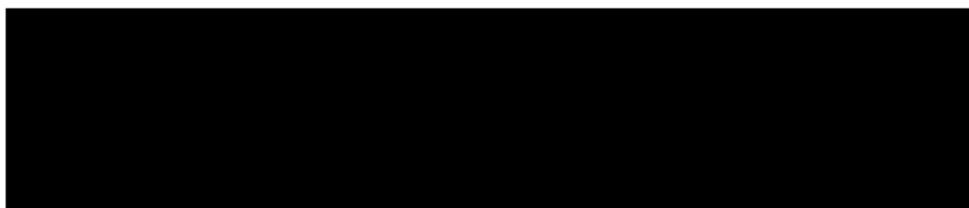


IN RE:           Petitioner:  
                      Beneficiary:



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.

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 rejected.

The petitioner is a New York corporation that seeks to employ the beneficiary as its general 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.

On January 29, 2010, the director denied the immigrant petition for the following grounds: (1) failure to establish that the beneficiary's employment abroad was within a qualifying managerial or executive capacity; (2) failure to establish that the beneficiary's proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity; and (3) failure to establish the ability to pay the beneficiary's proffered wage.

On March 4, 2010, counsel for 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 the brief and/or additional evidence will be submitted to the AAO within 30 days. The AAO received a brief from counsel on June 24, 2010.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt, which shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. *See* 8 C.F.R. § 103.2(a)(7)(i). For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office. Counsel for the petitioner filed the appeal 34 days after the director issued his decision. As the appeal was not timely filed, it must be rejected. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1). If the appeal had been timely filed, it would be summarily dismissed.

On the Form I-290B, counsel for the petitioner states the following:

The decision denying the petition, which sought classification of the beneficiary as a permanent employee of the appellant business entity. While the beneficiary of this petition is holding a similar position in entity. The decision does also not give credence of deference as case law requires to specific business necessity. Appellant through documentary evidence seeks to establish that the position for which petition (I-140) was submitted is necessary for the functioning of the business and that the beneficiary is the most suitable candidate for the position and furthermore, the beneficiary has a proven track record of performing all the functions of the position.

In the appeal brief, counsel for the petitioner contends that the I-140 was concurrently filed with Form I-485 and since the I-140 is still pending on appeal, the I-485 should not have been denied and the matter should be "reopened and the file held pending" until the AAO has made a decision.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

In regards to the director's conclusion that the petitioner failed to submit sufficient evidence to show the beneficiary's eligibility for the immigrant petition, counsel for the petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal. The petitioner claimed that the immigrant visa petition should be granted but did not provide any evidence to corroborate that claim. On the appeal brief, counsel does not state any concerns with the director's decision but instead states that the I-485 was erroneously denied since the I-140 is still pending. As no additional evidence is presented on appeal to overcome the decision of the director, the appeal would have been summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v) if it had been timely filed.

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 sustained that burden.

**ORDER:** The appeal is rejected.