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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**

[redacted]

B4

DATE: SEP 1 2 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
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 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 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 request 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 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 petitioner subsequently filed a motion to reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its chief operating 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 July 8, 2009, which contained information discussing the petitioner's eligibility, including an overview of the beneficiary's foreign and proposed employment as well as the basis for the petitioner's qualifying relationship with the beneficiary's foreign employer. The petitioner also provided supporting evidence in the form of financial and corporate documents pertaining to the U.S. entity.

The director reviewed the petitioner's submissions and determined that further information was needed in order to determine eligibility. The director therefore issued a request for additional evidence (RFE) dated March 19, 2010 asking the petitioner to supplement the record with evidence of its ability to pay the beneficiary's proffered wage and evidence establishing that the beneficiary meets the statutory requirements pertaining to his proposed employment in the United States and his employment abroad.

The petitioner provided a response containing a statement, dated April 5, 2010, which included information regarding the beneficiary's foreign and proposed employment. The petitioner also provided a list of the beneficiary's prior employers and dates of employment, which indicated that the beneficiary was intermittently employed both abroad with the petitioner's foreign affiliate and in the United States with [redacted] during a similar time period.

After reviewing the record, the director concluded that the petitioner failed to establish that the beneficiary was employed abroad during the requisite time period in a qualifying managerial or executive capacity. The director therefore issued a decision dated July 21, 2010 denying the petition.

The petitioner subsequently filed a motion to reconsider in support of which counsel for the petitioner submitted a statement dated August 18, 2010, asserting that the petitioner never claimed that the beneficiary was employed with [redacted] and further contending that the beneficiary was employed by [redacted] in an executive capacity. In a separate statement dated August 6, 2010, the owner of the petitioning and foreign entities provided a percentage breakdown of the duties and responsibilities the beneficiary carried out during his employment abroad.

In a decision dated December 22, 2010 the director dismissed the petitioner's motion to reconsider, concluding that the petitioner failed to overcome the ground for denial.

On appeal, counsel contends that the director erred in denying the petition and dismissing the subsequent motion, asserting that the director did not consider the relevant supporting evidence, which described the beneficiary's qualifying executive employment abroad.

The AAO finds that counsel's assertions are not persuasive and fail to establish that the beneficiary meets the statutory criteria for foreign employment.

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 the beneficiary's employment with the foreign entity. There are several elements that comprise the statutory requirement regarding the beneficiary's employment abroad. Namely, the petitioner must establish that the beneficiary's employment abroad took place within the statutorily prescribed period; that the employment abroad was either for the same entity, i.e., a branch of the petitioning entity, or with a legal entity that is an affiliate or subsidiary of the petitioner; and lastly, that the foreign employment was in a managerial or executive capacity. Based on the facts the petitioner presented with regard to the beneficiary's foreign employment, the AAO finds that the petitioner failed to establish that the beneficiary was employed abroad for one year during the relevant three-year period.

The regulation at 8 C.F.R. § 204.5(j)(3)(i) states, in part, the following:

> A) If the alien is outside the United States, in the three years 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[.]

The clear language of the statute indicates that the relevant three-year period is that "preceding the time of the alien's application for classification and admission into the United States under this subparagraph." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). The statute, however, is silent with regard to aliens who have already been admitted to the United States in a nonimmigrant classification. In promulgating the regulations on section 203(b)(1)(C) of the Act, the legacy Immigration and Naturalization Service (INS) concluded that it was not the intent of Congress to exclude L-1A multinational managers or executives who had already been transferred to the United States from this employment-based immigrant classification. Specifically, INS stated the following with regard to the interpretation of the Congressional intent behind the relevant statutory provisions:

> The Service does not feel that Congress intended that nonimmigrant managers or executives who have already been transferred to the United States should be excluded from this classification. Therefore, the regulation provides that an alien who has been a manager or executive for one year overseas, during the three years preceding admission as a nonimmigrant manager or executive for a qualifying entity, would qualify.

56 Fed. Reg. 30703, 30705 (July 5, 1991).

In other words, for those aliens who are currently in the United States in L-1A status, the relevant time period mentioned in the statute should be the three-year period preceding the time of the alien's application and admission as (or change of status to) an L-1A multinational managerial or executive classification.

In the instant matter, the record does not show that the beneficiary entered the United States as an L-1 nonimmigrant or that he obtained such status during any part of his residence in the United States. Although the record indicates that the petitioning entity filed a Form I-129 petition seeking to employ the beneficiary as an H-1B nonimmigrant, a petition that was approved for a validity period that commenced on December 13, 2004 and ended on October 1, 2007, the petitioner indicated that the beneficiary's status at the time of filing was that of an H-4 nonimmigrant—a visa issued to the dependent(s) of a holder of an H-1A, H-1B, H-2A, H-2B, or H-3 nonimmigrant visa holder. Thus it cannot be concluded that the beneficiary entered the United States or that at the time of filing he held a nonimmigrant visa for the purpose of "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."

Accordingly, the beneficiary does not fit the criterion described in 8 C.F.R. § 204.5(j)(3)(i)(B) and must have his period of employment abroad analyzed under the criterion described at 8 C.F.R. § 204.5(j)(3)(i)(A), which states that the relevant three-year time period is that which falls within the three years prior to the filing date of the instant petition. As the instant petition was filed on August 10, 2009 and the entry stamp on the beneficiary's visa page shows that the beneficiary was present in the United States since March 5, 2004, it cannot be concluded that the beneficiary was employed abroad during the relevant three-year time period, regardless of the employment capacity of the beneficiary's position with the foreign entity.

The AAO finds that the petitioner is statutorily ineligible due to failure to demonstrate one of three fundamental requirements regarding the beneficiary's employment abroad. Since the petition may not be approved, the AAO declines to address the issue of whether the beneficiary's employment abroad was in a qualifying managerial or executive capacity.

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.