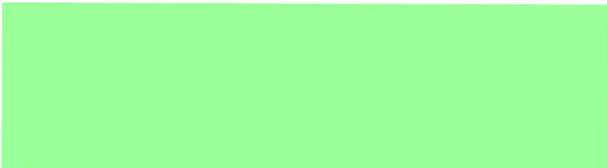


(b)(6)

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

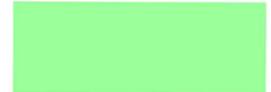


U.S. Citizenship
and Immigration
Services

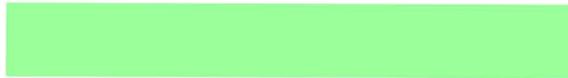


DATE: FEB 01 2013 OFFICE: TEXAS SERVICE CENTER

FILE:

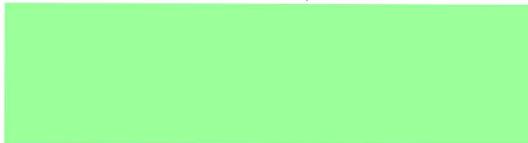


IN RE: Petitioner:
Beneficiary:



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.

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 AAO will withdraw the director's decision and remand the matter for further consideration and entry of a new decision.

The petitioner is a Florida limited liability company operating in the construction engineering services industry. It seeks to employ the beneficiary in the position of president. 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 based on a finding that the petitioner failed to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel has provided a comprehensive appellate brief along with documentary evidence. Upon reviewing the record in its entirety and considering the supplemental submissions on appeal, the AAO finds that the petitioner has submitted sufficient evidence to overcome the director's adverse decision. Accordingly, the director's decision dated October 31, 2011 will be withdrawn.

Notwithstanding this favorable conclusion, the AAO finds that the record lacks sufficient evidence to establish that the petitioner was able to employ the beneficiary in a qualifying managerial or executive position at the time the Form I-140 was filed.

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.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The AAO also finds that is appropriate and even necessary to consider this information in light of the petitioner's organizational hierarchy, the beneficiary's position therein, and the petitioner's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks.

In the present matter, the job description that is contained within the petitioner's supporting statement dated May 10, 2010 indicates that a significant portion of the beneficiary's time would be allocated to non-qualifying tasks, such as meeting with banking institutions to negotiate credit lines and terms, communicating with customs brokers and freight forwarders, and overseeing office set-up. Other portions of the job description, such as interviewing personnel to fill managerial, administrative, and support positions, and hiring computer firms to set up and oversee the company's website, indicate that the petitioner may have only been in its beginning phase of operation and thus raise questions regarding the petitioner's ability to support the beneficiary in a qualifying managerial or executive capacity as of the filing date.

Therefore, while the AAO will withdraw the director's decision, the record as presently constituted does not warrant an approval of the petition. Accordingly, the case will be remanded for a new decision, which shall take proper notice of the issues discussed above. The director may issue a request for additional evidence in order to allow the petitioner to address the relevant factors that pertain to its eligibility for the immigration benefit sought.

ORDER: The decision of the director dated October 31, 2011 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.