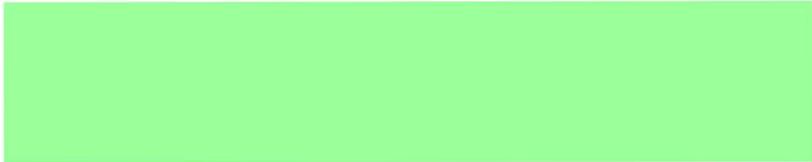


(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



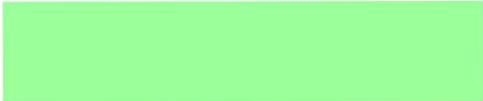
U.S. Citizenship
and Immigration
Services



DATE: **JUN 13 2013** OFFICE: NEBRASKA 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner was incorporated in 1997 in the State of Illinois. It is engaged in ground transportation services. The petitioner seeks 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, concluding that the petitioner failed to establish the following: (1) that the beneficiary is an employee and not the employer; (2) that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing the day-to-day duties of the business; (3) that the foreign entity is doing business; and (4) that the petitioner has been doing business for at least one year.

With respect to the first ground of denial, the director found that the evidence indicates that the beneficiary is the majority shareholder in the beneficiary's foreign employer, [REDACTED] (the foreign entity), as well as the petitioning entity, [REDACTED]. The director concluded: "Since the evidence appears to indicate that there is no individual or board that has or will supervise the beneficiary's work or has the authority to hire or fire the beneficiary, the beneficiary must be considered the employer and not an employee."

The director's finding with respect to the first ground of denial is inappropriate. The beneficiary's employer-employee relationship with the foreign and U.S. entities is not an essential issue for consideration when evaluating the beneficiary's eligibility. While the statute uses the term "employee" in the definition of manager or executive, the AAO notes that the key elements of the statutory definitions focus on the duties and responsibilities of the employee and not the person's employment status. Looking at the statutory scheme as a whole, the AAO concludes that it is most appropriate to review the beneficiary's eligibility by making a determination on his or her claimed managerial or executive employment. The AAO finds no need to further explore the issue of an employer-employee relationship between the beneficiary and his foreign and U.S. employers.

With respect to the second ground of denial, the director found that the evidence did not establish that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing the day-to-day duties of the business. The director concluded: "The evidence does not indicate that a transportation services company with only eight employees would contain the organizational complexity for this classification."

The director's finding with respect to the second ground is unsupported by the record and inappropriate. Contrary to the director's finding that the evidence does not establish that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel, the petitioner asserted that the beneficiary would be supervising a Vice President, [REDACTED] who will direct the daily

¹ The record reflects that the beneficiary is a 50% shareholder in both the foreign and U.S. entities.

operations of the U.S. petitioner.² The director's decision does not discuss the Vice President position. The director's finding appears to be based solely upon the petitioner's size of eight employees. However, a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). While it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, the director must articulate all of the other relevant factors that were considered in concluding that a company lacks organizational complexity. The director has not articulated any factors other than the company's size.

With respect to the third ground of denial, the director found that there was insufficient evidence to establish that the foreign entity continues to do business. The director observed that the owners of the foreign entity are both presently residing in the United States, and the beneficiary was "the individual chiefly responsible for the growth of [the foreign entity]."

The director's finding with respect to the third ground is unsupported by the record or the law. In support of the petition, the petitioner asserted that the foreign entity continues to do business, and submitted the foreign entity's recent real estate registration, letter confirming its 52 employees, business contracts, and photographs of its premises as supporting evidence. The director did not discuss the submitted evidence. The director's finding appears to be based solely upon the fact that the beneficiary and his wife, the owners of the foreign entity, are presently residing in the United States. However, the fact that the foreign entity's owners are residing in the United States does not establish that the foreign entity no longer exists or is not doing business. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

Finally, with respect to the fourth ground of denial, the director found that the petitioner has not been doing business for at least one year. In denying on this ground, the director found that beneficiary and his partner purchased the U.S. business on February 9, 2008 from its original owner. The director thus concluded: "The evidence demonstrates the current ownership and management of the petitioner was not able to conduct business until at least February 9, 2008."

The director's finding with respect to the fourth ground is erroneous as a matter of law. The petitioner submitted evidence, including the petitioner's Sublease Agreement with [REDACTED] dated August 13, 2007 and its 2006 federal tax return showing \$175,860 in gross receipts, to sufficiently establish that the petitioner, [REDACTED] has been doing business for at least one year prior to filing. The change in the petitioner's ownership and management has no bearing on whether the petitioner has been doing business as defined by the regulations. See 8 C.F.R. § 204.5(j)(2) (defining "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity").

After a thorough review of the record, the AAO finds that the director's denial is deficient as it is based upon unsupported conclusions of law and fact. As the decision is void of an accurate, factual analysis of the

² The AAO makes no finding on whether the beneficiary will be employed in a primarily managerial or executive capacity. The record as presently constituted contains insufficient evidence, such as detailed position descriptions for all U.S. employees, to establish the U.S. entity's actual staffing and organizational structure, and hence, the beneficiary's employment capacity. Here, the director did not issue a request for evidence so that this issue can be explored further.

evidence of record, there is no indication that the director considered all of the relevant documentation submitted in support of the initial petition. Nor did the director make an effort to obtain additional evidence or information upon which to draw a proper conclusion. Accordingly, the case will be remanded for a new decision. The director may issue a notice requesting any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

ORDER: The decision of the director dated October 28, 2008 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.