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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 1 8 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: SELF-REPRESENTED

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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO withdrew the director's decision and remanded the matter to the service center for further action and a new decision, with instructions to certify the decision to the AAO if the decision is adverse to the petitioner. *See* 8 C.F.R. § 103.4(a)(1). The director complied with those instructions and issued a new decision, which has been forwarded to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a limited liability company organized in the State of Texas. It seeks to hire the beneficiary in the position of general operations manager. Accordingly, the petitioner endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

After remand, the director issued two additional requests for evidence. The record indicates that the petitioner did not respond to the requests. In his latest decision, dated July 6, 2011, the director determined that the petitioner failed to establish that: 1) the beneficiary was employed abroad in a qualifying managerial or executive capacity, and 2) that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

Despite the multiple opportunities, the record indicates that the petitioner has not responded or otherwise supplemented the record with additional evidence or information in response to the director's adverse findings.

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 two primary issues to be addressed in this proceeding focus on the beneficiary's employment capacity in his position with the foreign employer and in his proposed position with the petitioning entity. The AAO will examine the record to determine whether the director properly concluded that petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily--
>
> (i) manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
>
> (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily--
>
> (i) directs the management of the organization or a major component or function of the organization;
>
> (ii) establishes the goals and policies of the organization, component, or function;
>
> (iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The AAO initially reviewed the record on appeal and determined that the petitioner successfully overcame the original basis for denial, which pertained to the petitioner's qualifying relationship with the beneficiary's employer abroad. However, after conducting a comprehensive review, the AAO determined that the record lacked sufficient evidence to show that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity. Accordingly, the AAO instructed the director to issue a request for evidence (RFE), asking the petitioner to provide organizational charts pertaining to both entities as well as detailed descriptions of the job duties that comprised the beneficiary's employment abroad and those duties that would comprise the beneficiary's proposed employment with the U.S. entity.

In compliance with the AAO's instructions, USCIS records show that the director issued an RFE on January 10, 2011 and again on April 20, 2011, instructing the petitioner to provide the organizational charts and supplemental job descriptions that the AAO found necessary in order to make a determination of the petitioner's eligibility. The record shows that the petitioner failed to respond to the request and thus provided no additional evidence for review.

Accordingly, on July 6, 2011, the director issued a decision denying the petition, citing the petitioner's failure to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial capacity as the two grounds for denial.

The record indicates that, with the exception of a brief letter notifying the AAO of its decision to represent itself in this proceeding without further assistance from counsel, the petitioner has not supplemented the record in any way.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner has been put on notice of the deficiencies in the evidence and has been given an opportunity to remedy to that deficiency. Even if the petitioner had submitted evidence directly to the AAO, the AAO would not have accepted evidence offered for the first time on appeal or certification. *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.*

As indicated above, the AAO expressly stated in its decision that the record lacked sufficient evidence to support an affirmative finding regarding the beneficiary's foreign and proposed employment. In accordance with the AAO's determination, the director issued an RFE expressly instructing the petitioner to provide evidence in order to facilitate a comprehensive review of information pertaining to the organizational hierarchies of the beneficiary's foreign and U.S. employers as well as the beneficiary's positions and job

duties with each entity. As the petitioner has not provided any evidence or information addressing the two grounds for denial, the AAO finds that the petitioner has failed to overcome the two adverse conclusions cited in the director's decision and the petition was properly denied.

Accordingly, the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 director's decision dated July 6, 2011 denying the visa petition is affirmed. The petition will be denied.