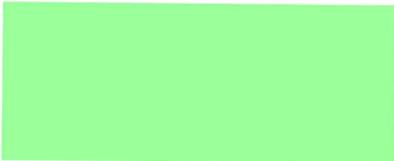




U.S. Citizenship
and Immigration
Services

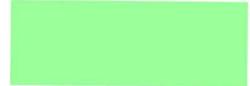
(b)(6)



DATE: **SEP 09 2013**

Office: NEBRASKA SERVICE CENTER

FILE:



IN RE:

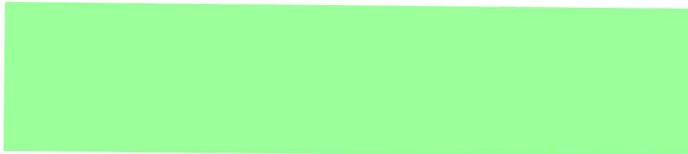
Petitioner:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner, a California corporation, is self-described as a wholesale food purchaser and it seeks to employ the beneficiary as its Store 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.

The director denied the petition concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director emphasized that the petitioner failed to provide detailed position descriptions for the beneficiary and his subordinates, despite the director's issuance of a request for evidence (RFE) with specific instructions to submit such information.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner states that it "mistakenly did not supply all of the information requested by the director," and acknowledges that the lack of evidence contributed in large part to the director's decision to deny the petition. In support of the appeal, the petitioner provides more detailed position descriptions for the beneficiary and his subordinate employees and "some random photographs" of the petitioner's physical premises.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Neither the petitioner nor counsel has identified any erroneous conclusion of law or statement of fact as a basis for the appeal. In fact, the petitioner does not contend that the director's decision was incorrect based on the evidence of record; the petitioner specifically acknowledges that it failed to submit evidence that was needed in order for the director to reach a favorable determination. The petitioner now submits the detailed position descriptions that were previously requested.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *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.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128

(BIA 2013). Inasmuch as the petitioner has not identified specifically an erroneous conclusion of law or statement of fact in support of the appeal, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.