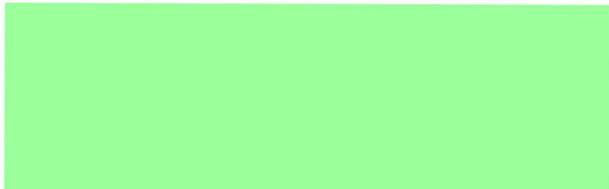


(b)(6)

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

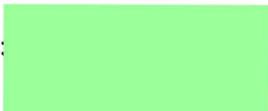


U.S. Citizenship
and Immigration
Services

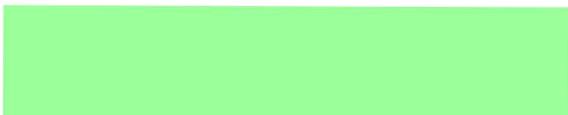


DATE: FEB 04 2014

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 (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.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the preference visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO) and, on May 23, 2013, the AAO dismissed the appeal. The petitioner filed a motion to reopen. On August 22, 2013, the AAO dismissed the motion. The matter is now before the AAO on a motion to reconsider. The AAO will remand the matter to the director for further action.

The petitioner is a New Jersey corporation that seeks to employ the beneficiary as its 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).

The director originally denied the petition after concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In denying the petition, the director found that the petitioner did not present sufficient evidence to establish that the beneficiary had subordinates to carry out non-managerial duties associated with the company's day-to-day operations. The director found that the beneficiary's actual time devoted to non-qualifying functions would exceed that which is spent on managerial or executive duties for the U.S. company. *See* sec. 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44).

The petitioner filed the instant motion to reconsider the AAO's decision of August 22, 2013, asserting that the decision was based on an incorrect application of law or policy. On motion, the petitioner claims that the director "failed to meet its burden without performing an analysis of any of the evidence presented." Citing to *Matter of O-S-G*, 24 I&N Dec. 56 (BIA 2006), the petitioner challenges the AAO's ultimate decision based upon the previously established factual record.

At this time, the AAO may not reach the merits of this case because the record is not complete. Specifically, the record does not contain a copy of the director's request for evidence (RFE), dated March 22, 2012. Nor does the record contain the petitioner's response to the RFE, which the director acknowledges receiving on June 15, 2012. It is the responsibility of the director to ensure that the record is complete and contains all evidence that has been submitted by the petitioner or considered by USCIS in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976).

Accordingly, the AAO will withhold any comment on the merits of this petition and will remand this matter for the inclusion of the missing evidence. Upon remand, the petitioner should have the opportunity to supplement the record. Once the record of proceeding is made complete, the director shall return the record to the AAO for adjudication.

The burden of proof remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The AAO intimates no preference, based upon this incomplete record, as to the eventual decision and acknowledges the director's concerns regarding the sufficiency of the evidence.

ORDER: The petition is remanded to the director for further consideration consistent with the foregoing opinion.