



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: FEB 28 2014

OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:

Beneficiary:

[Redacted]

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:

[Redacted]

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. All documents related to this matter have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The director of the Texas Service Center ("the director") denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded to the director for further review and entry of a new decision.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, 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 petitioner operates a computer software development and consultancy business and seeks to employ the beneficiary in the position of consultant.

The director denied the petition concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director considered information submitted in support of the petitioner's most recent H-1B nonimmigrant petition filed on behalf of the beneficiary. The director determined that the job description submitted in support of this petition, and the petitioner's claim that the beneficiary would perform primarily managerial duties, is not credible.

On appeal, counsel contends that the director's concerns regarding the information provided in the H-1B nonimmigrant petition were not mentioned in the request for evidence issued prior to denial of the petition. As such, counsel emphasizes that the petitioner "was never afforded an opportunity to address the contents of the H-1B Support Statement." Counsel further contends that the "statute clearly state that the petitioner must be informed of derogatory information and afforded an opportunity to address it."

Upon review of the record and the director's decision, the director's introduction of derogatory information unknown to the petitioner in the notice of decision was contrary to regulatory requirements. Accordingly, the decision will be withdrawn and the matter will be remanded to the service center for further action and entry of a new decision.

The regulation at 8 C.F.R. § 103.2(b)(16)(i) provides:

Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of the fact and offered an opportunity to rebut the information and present information on his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii),(iii) and (iv) of this section. Any explanation, rebuttal or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on March 6, 2013. The director issued a request for evidence on April 5, 2013, and petitioner responded on June 25,



2013. The director did not issue a second notice advising the petitioner of derogatory information of which it was not aware. Instead, the director informed the petitioner of the derogatory information which formed the basis of the denial in the notice of decision dated July 22, 2013.

As the petitioner was not afforded an opportunity to review and rebut the derogatory information prior to the issuance of the decision, as required by 8 C.F.R. § 103.2(b)(16)(i), the decision dated July 22, 2013 was improperly rendered and is hereby withdrawn.

The matter will be remanded to the director, who is instructed to issue a notice of intent to deny in which the petitioner shall be informed of any and all derogatory information on which USCIS may rely to deny the petition. The petitioner shall be granted an opportunity in which to rebut the information and/or submit additional evidence on its own behalf before a new decision is rendered.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for the purposes of issuing a notice of intent to deny advising the petitioner of the derogatory information and for the entry of a new decision, which, if adverse, shall be certified to the AAO.