



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 27 2014** OFFICE: TEXAS SERVICE CENTER



IN RE: Petitioner: [Redacted]
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:



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 preference visa petition was denied by the Director, Texas Service Center. 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 certified to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a Florida limited liability company that seeks to employ the beneficiary in the United States as its Regional Operations 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 on February 13, 2012 concluding that the petitioner failed to establish its ability to pay the beneficiary's proffered annual wage of \$50,000.

On March 13, 2012 in support of a motion to reopen and reconsider the decision, the petitioner submitted a copy of its IRS Form 1065, U.S. Return of Partnership Income, for the 2011 tax year, asserting that this document was unavailable for submission at the time the petition was filed in August 2011, or at the time the petitioner responded to the director's request for additional evidence (RFE) in December 2011.

On June 26, 2012, the director dismissed the motion finding that petitioner's filing failed to meet the requirements of a motion to reopen. The AAO later reviewed the director's decision on appeal and determined that while the director appropriately relied upon the petitioner's 2010 IRS Form 1065 in the absence of the company's 2011 tax return, the petitioner properly submitted the 2011 Form 1065 as new evidence on motion.

In a decision dated April 26, 2013, the AAO withdrew the director's decision, concluding that the petitioner established its ability to pay and thus overcame the sole ground cited as the basis for denial. The AAO remanded the matter to the Texas service center instructing the director to give further consideration to eligibility factors that were not previously considered. Specifically, the AAO determined that the record, at the time of the appeal, did not establish that: (1) the beneficiary was employed abroad for the requisite one year during the qualifying three-year time period; (2) the petitioner and the beneficiary's foreign employer have a qualifying relationship; and (3) the beneficiary's proposed U.S. employment would be in a qualifying managerial or executive capacity.

I. The Law

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 or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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.

Additionally, the regulation at 8 C.F.R. § 204.5(j)(3)(i) states, in part, the following:

- (A) If the alien is outside the United States, in the three years preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas[.]

II. The Issues on Certification

On June 18, 2013, the director issued an RFE in compliance with the instructions in the AAO's April 26, 2013 decision. In light of the findings and observations made in the AAO's decision, the RFE outlined the three key issues of concern. Specifically, the director instructed the petitioner to provide evidence establishing the ownership and control of the U.S. and foreign entities. The director also asked for documentation pertaining to the beneficiary's foreign employment, including evidence establishing that the beneficiary was employed in a qualifying managerial or executive capacity as well as evidence showing that the beneficiary was employed abroad by a qualifying entity for at least one year out of the three years immediately prior to the beneficiary's nonimmigrant entry to the United States. Lastly, the director instructed the petitioner to provide evidence demonstrating that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity, including the U.S. entity's organizational chart listing all employees by name and position title and providing the employees' respective job descriptions and educational credentials, a supplemental job description listing the beneficiary's daily job duties and the percentage of time she would dedicate to each of her assigned tasks, and documents of contract labor if the

petitioner claims that contract labor was used. The petitioner was given eighty four days in which to respond to the director's RFE. It is noted that 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 record shows that the petitioner did not respond to the director's RFE. Accordingly, in light of the regulation at 8 C.F.R. § 103.2(b)(13), the director chose to deny the petition summarily as abandoned based on the petitioner's failure to respond to the RFE and based on the totality of the circumstances, which took into account the petitioner's failure to meet certain eligibility criteria. In addressing the documentation on record, the director reviewed the observations made by the AAO, including the inconsistent evidence of the petitioner's ownership, the lack of probative evidence documenting the beneficiary's time period of employment abroad, and the overall absence of detailed information discussing what job duties the beneficiary would perform in her proposed position with the U.S. entity.

As indicated above, the AAO expressly stated in its decision that the record lacked sufficient evidence to support a favorable finding based on the anomalies and lack of sufficient evidence with regard to the three grounds of ineligibility as described above. 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 any information pertaining to these evidentiary deficiencies. As the petitioner has not provided any evidence or information addressing the three grounds for denial, the AAO finds that the petitioner has failed to overcome the 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 October 21, 2013 denying the visa petition is affirmed.
The petition will be denied.