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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 03 2003

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:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration.

The petitioner is a corporation organized in the State of Florida in May 1997. It is engaged in the business of large media digital printing. It seeks to employ the beneficiary as its general 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 determined that the petitioner had not established that the beneficiary's foreign employer had employed the beneficiary for one year in the three years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner states that the beneficiary was working in the United States as an intracompany transferee in L-1A status at the time of filing the petition. Counsel asserts that the director's implication that the beneficiary was working and residing outside the United States at the time of filing the petition is in error.

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 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.

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 that 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. 8 C.F.R. § 204.5(j)(5).

The director relies on 8 C.F.R. § 204.5(j)(3)(i)(A) in making her decision. The director does not discuss or otherwise acknowledge that this section contains a disjunctive at the end of the sentence requiring the director to also consider 8 C.F.R. § 204.5(j)(3)(i)(B) of this section. The regulation at 8 C.F.R. § 204.5(j)(3) (i) states in pertinent part:

> (i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:
>
> > (A) If the alien is outside the United States, in the three years immediately 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;

The director's restricted reading of subpart (A) of this section is not acceptable. Subpart (A) may appear to imply that if the beneficiary was outside the United States at any time during the three years immediately preceding the filing of the petition, the petitioner must demonstrate that the beneficiary was working for the foreign entity in a managerial capacity during that time period. However when this subpart is read in conjunction with subpart (B), the intent of the drafters is made clear. Subpart (A) of this section is applicable when the beneficiary is residing and working outside of the United States in the three years immediately preceding the filing of the petition. Subpart (B) of this section is applicable when the beneficiary "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." As the director did not consider whether the petitioner had established that the beneficiary was working in a managerial or executive capacity for the overseas entity a full one year in the three years preceding his entry as a nonimmigrant, the case must be remanded.

Review of the record reveals additional issues that must be addressed by the director before a decision is entered.

The petitioner's initial description of the beneficiary's duties for both the overseas entity and the United States petitioner provides a general overview of the beneficiary's duties without conveying an understanding of the beneficiary's actual daily duties. In addition, the petitioner has stated that the beneficiary supervised other employees, both for the overseas entity and will supervise employees for the petitioner. However, the petitioner has not provided documentary evidence of the employment of individuals subordinate to the beneficiary's position for the overseas entity or the petitioner. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); *see generally Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record is insufficient to establish that the beneficiary's primary assignment for the overseas entity was in an executive or managerial capacity. Likewise, the record is insufficient to establish that the beneficiary's primary assignment for the petitioner has been or will be in an executive or managerial capacity.

This matter will be remanded for the purpose of a new decision. The director must afford the petitioner reasonable time to provide evidence that is pertinent to the above issues, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

ORDER: The director's decision of August 7, 2002 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.