



**U.S. Citizenship  
and Immigration  
Services**

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 10545995

Date: OCT. 16, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner, a sporting goods distributor, seeks to permanently employ the Beneficiary as its sales and marketing director under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner has been doing business for at least one year prior to the petition's filing date; (2) the Petitioner has the ability to pay the Beneficiary's proffered wage; (3) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; (4) the Beneficiary has been employed abroad in a managerial or executive capacity; and (5) a valid, full-time job offer exists for the Beneficiary as claimed on the petition form.

The Petitioner filed an untimely appeal, which the Director dismissed after determining that it did not meet the requirements of a motion to reopen. The matter is now before us on appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

The petition form shows the names of a person and a company, identifying both as "the Person or Organization Filing This Petition." Because the petition must be filed by the intending employer, rather than by one particular company official, U.S. Citizenship and Immigration Services (USCIS) recorded the company as the Petitioner. The petition form showed an address in [redacted], Wisconsin. The Petitioner leased commercial space in nearby [redacted] Wisconsin.

The Director denied the petition on July 25, 2017, and mailed the denial notice to the address shown on the petition form. The Petitioner filed an untimely appeal on February 4, 2019, claiming to have attempted, without success, to obtain a copy of the denial notice. The Petitioner stated that it submitted change of address notifications in September 2017 and March 2018, but the Petitioner did not claim to have submitted any such notice before the issuance of the denial notice in July 2017.

The Director treated the untimely appeal as a motion to reopen, under the provisions of 8 C.F.R. § 103.3(a)(2)(v)(B)(2). On October 21, 2019, the Director dismissed the motion, because it did not

include new facts, with corroborating evidence, as required by 8 C.F.R. § 103.5(a)(2). The Director also stated that there was no record of any change of address notices.

On appeal, the Petitioner does not contest the stated grounds for the dismissal of the motion. Instead, the Petitioner states:

On or about November 23, 2016 the petitioner filed an electronic change of address with USCIS [U.S. Citizenship and Immigration Services] prior to filing for the renewal [of] the Beneficiary and his family's Employment Authorization and Travel Document[s (EADs)]. USCIS acknowledged the change of address and thereby mailed the EAD cards on April 5, 2017 for the entire family to the . . . new address . . . [in] [redacted] TX. . . .

. . . .

USCIS mailed the EAD cards in April, 2017 but failed to mail the [denial] notice to the new address.

The petitioning company did not file the EAD application; the Beneficiary filed it on behalf of himself and his family. USCIS would have had no reason to infer from this filing that the petitioning corporation had changed its address. The record does not show that the petitioning corporation filed its own change of address notice.<sup>1</sup>

Furthermore, the Petitioner responded to a request for evidence in November 2016. The Petitioner's cover letter, dated November 29, 2016, shows the original [redacted] Wisconsin address. The letter does not mention any change of address. This letter is prima facie evidence that the Petitioner continued using the [redacted] address in correspondence to USCIS after November 23, 2016.

The Petitioner submits a printout of an undated email message from the president of the petitioning entity, requesting a copy of the denial notice. This message gives the same [redacted] address for the Petitioner as the one shown on the petition form, with no indication that the company had moved or was now using a different address.

The Petitioner has not shown, on appeal, that it notified USCIS of a change of address. The Director mailed the denial notice to the [redacted] Wisconsin, address that the Petitioner continued to use in communications to USCIS, as shown above. Therefore, the Petitioner has not shown that the Director sent the denial notice to an address other than the Petitioner's address of record as of the denial date. Also, the Petitioner has not shown that the Director erred in dismissing the earlier motion to reopen.

The initial denial of the petition is not before us, and therefore we will not discuss the merits of the petition in detail. However, we will briefly note that one of the grounds for denial concerns the length of time the Petitioner was doing business before filing the petition.

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<sup>1</sup> We note that the Petitioner filed the present appeal through a third party, which uses the same address shown on the Beneficiary's EAD mailing.

The Petitioner must show that the prospective United States employer has been doing business for at least one year. 8 C.F.R. § 204.5(h)(3)(i)(D). The Petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). In this case, the record shows that the Petitioner filed its articles of incorporation on [redacted] 2015.<sup>2</sup> Other documents in the record relating to the initial establishment of the business also date from [redacted] 2015. The Petitioner filed the petition less than seven months later, on October 22, 2015. The record consistently shows that the Petitioner was not doing business, or even in existence, for at least one year before the filing date. This is a disqualifying circumstance, and the petition is not approvable for this reason.

The appeal does not show that the Director erred, either in the dismissal of the motion or in the denial of the underlying petition. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

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<sup>2</sup> As evidence of its corporate filings, the Petitioner submits printouts from the website of the Wisconsin Department of Financial Institutions. We note that this website now shows that the petitioning corporation was “Administratively Dissolved” on June 10, 2019. [https://www.wdfi.org/apps/CorpSearch/Results.aspx?q=\[redacted\]](https://www.wdfi.org/apps/CorpSearch/Results.aspx?q=[redacted]) (last visited Sept. 4, 2020).