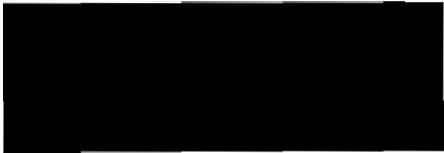


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134

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 14 2006
SRC 01 089 53098

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:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was incorporated in 1999 in the State of Florida. In a letter dated December 18, 2000, the petitioner claimed that it has been and would continue to engage in the business of distributing imported cars and car parts. It seeks to hire the beneficiary as its marketing 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 record shows that various inquiries were conducted in regard to the petition based on the suspicion that fraud had been perpetrated in the filing of the petition on behalf of the beneficiary. More specifically, a Memorandum of Investigation indicates that [REDACTED] whose purported signature on several of the petitioner's documents suggests that he has signatory powers within the petitioning entity, was contacted by an Intelligence Research Specialist in regard to various L-1A visa petitions that were purportedly filed by the petitioner on behalf of various beneficiaries.

On January 16, 2002, the Texas Service Center received, via fax, the beneficiary's notice withdrawing the I-140 petition that had been filed by the petitioner on his behalf. The notice was signed by the beneficiary, not by a representative of the petitioning entity.

On January 22, 2002, the director issued a notice of his intent to deny the petition. The director cited the various factual inconsistencies and other indications of fraud, which indicate that the petition did not warrant approval at the time of filing. The director also quoted the regulation at 8 C.F.R. 103.5(b)(6) regarding withdrawal of petitions and pointed out that only "[a]n applicant or petitioner may withdraw an application or petition . . ." adding emphasis to the words "applicant" and "petitioner."

Although the petitioner was granted a period of 30 days in which to respond to the notice of intent to deny, the record indicates that the petitioner failed to reply to any of the allegations brought forth by the director. Accordingly, the director denied the petition on April 26, 2004. The director repeated the various indicators of fraud as stated earlier in the notice of intent to deny and stated that the withdrawal request was invalid, as it originated with the beneficiary, who had no standing to request a withdrawal.

On appeal, counsel vehemently asserts that the director has no jurisdiction to issue a denial on a petition that was withdrawn prior to the issuance of the denial and instructs the AAO to invoke the doctrine of collateral estoppel in precluding the director from issuing a denial in this matter. In support of this request, counsel refers to a Board of Immigration Appeals (BIA) case where the BIA instructed the district director to withdraw his denial of the petition in light of the petitioner's prior request to withdraw its petition. Counsel urges the AAO to follow the precedent set in the BIA's decision. *See Matter of Cintron*, 16 I&N 9 (BIA 1976). While counsel is correct in stating that the AAO is bound by BIA published decisions, the facts in the cited precedent decision clearly indicate that the *petitioner*, not the beneficiary, withdrew the petition. Thus, there was no issue over whether or not the withdrawing party had standing to withdraw the petition. The petitioner in the cited case clearly filed the withdrawal pursuant to the requirements of 8 C.F.R. § 103.5(b)(6). To the contrary, the withdrawal in the instant matter was filed by the beneficiary. Unlike the withdrawal request filed on behalf of [REDACTED], the beneficiary's withdrawal request was not filed by someone with signatory powers within the petitioning entity.

Counsel asserts that the director should have informed the petitioner of the improper filing instead of remaining silent and later denying the petition. However, there is no statute or regulation that requires Citizenship and Immigration Services (CIS) to respond to a request made by a person who has no standing in a matter pending before it. Therefore, counsel's assertions are without merit. The director's decision to reject the withdrawal request as improperly filed will be upheld.

Although the director cited a number of factual discrepancies that lead to a finding of fraud, the petitioner did not address these issues in any way that would explain or reconcile the considerable inconsistencies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* In the instant matter, CIS has issued an RFE and a decision denying the petition. In both instances, the petitioner was informed of the various inconsistencies that lead CIS to doubt the veracity of the petitioner's claim regarding the beneficiary's eligibility for classification as a multinational manager or executive. The petitioner has not, however, submitted any evidence to overcome the director's grounds for denying the petition. Accordingly, this petition cannot be approved, and the director's decision to deny the petition will be upheld.

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 appeal is dismissed.