

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



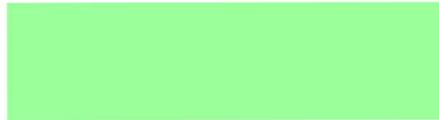
DATE: **MAY 07 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

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

The petitioner is a Delaware corporation that seeks to employ the beneficiary in the United States as its product engineering manager. 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.

In support of the Form I-140 the petitioner submitted a statement dated April 26, 2011, which contained relevant information pertaining to the beneficiary's employment history with the petitioning entity. The petitioner stated that the beneficiary has worked abroad for a combined period of twelve months "on behalf of [REDACTED],"

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director issued a request for evidence (RFE) dated September 30, 2011 instructing the petitioner to provide a detailed organizational chart of the beneficiary's former employer abroad illustrating the foreign entity's organizational hierarchy during the time of the beneficiary's employment. The director also asked the petitioner to describe the job duties the beneficiary performed during his former employment with the foreign entity.

In response, counsel for the petitioner provided a statement dated November 21, 2011. Counsel explained that the petitioner operates abroad by virtue of a joint venture that resulted in the creation of an affiliate entity, where counsel claims the beneficiary was intermittently employed in the role of a function manager from October 19, 2008 until April 6, 2011. Counsel also states that the beneficiary's employment with the petitioning entity commenced in January 2007.

After considering the petitioner's response, the director determined that the beneficiary's employment abroad did not meet the regulatory requirements because the beneficiary did not have an uninterrupted one-year period of employment with the qualifying entity abroad. The director focused on the intermittent nature of the employment and cited the regulation at 8 C.F.R. 214.2(l)(1)(ii)(A) in support of his conclusion.

On appeal, counsel disputes the director's decision, pointing out that the regulatory provision cited in the director's decision pertains to nonimmigrant L-1A petitions and that there is no similar provision that pertains to the I-140 immigrant petition. Counsel asserts that there is no regulatory provision that requires the beneficiary's employment abroad to be continuous.

While the AAO agrees with counsel's assertion, the record nevertheless supports the director's ultimate finding of ineligibility regarding the issue of the beneficiary's employment abroad. The discussion below will address the relevant factors and explain the basis for the AAO's decision in this matter.

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.

(Emphasis added).

Additionally, the regulation at 8 C.F.R. 204.5(j)(3)(i) includes the following relevant filing requirements that pertain to the instant petitioner:

(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[.]

These regulatory provisions indicate that the relevant statutory language is specific in limiting the application of section 203(b)(1)(C) of the Act to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

Thus, the beneficiary's employment abroad must necessarily predate the beneficiary's employment with the U.S. entity.

Considering the facts in the present matter, the beneficiary's employment abroad did not commence prior to his employment with the petitioning entity. To the contrary, the beneficiary's U.S. employment commenced in January 2007 while his claimed employment with the qualifying entity abroad did not commence until approximately 22 months later in October 2008. Therefore, even though counsel is correct in pointing out that the beneficiary's period of employment abroad did not have to be continuous, the petitioner is required to establish that the beneficiary was employed abroad for an aggregate of one year prior to his entry to the United States to work for the petitioning entity.

Additionally, the record does not adequately support the claim that the beneficiary's reason for traveling abroad was for the purpose of being employed by the foreign entity. To the contrary, the statement that was initially provided in support of the petition specifically indicated that the purpose of the beneficiary's travel abroad was to perform work "on behalf of [REDACTED]". This statement indicates that the beneficiary performed work abroad for the benefit of the petitioning entity. Despite the beneficiary's travel documents, which establish that the beneficiary spent more than an aggregate of one year abroad, such

documents are not sufficient to establish that the beneficiary was actually employed by the foreign entity, rather than the petitioner, during the time of his extended visits. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, not only does the record fail to establish that the beneficiary was employed abroad during the requisite time period, but the facts also fail to support the finding that the beneficiary's time abroad was spent actually working for a qualifying foreign entity.

The petitioner does not meet the express provisions of the statute and regulations. Therefore, the petitioner is ineligible for the benefit sought and the petition must be denied.

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.