

(b)(6)

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



U.S. Citizenship
and Immigration
Services

DATE:

OFFICE: TEXAS SERVICE CENTER

FILE:

JAN 24 2014

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 (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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded for further action and entry of a new decision.

The petitioner, a Texas corporation, operates an ECM/IT engineering consulting firm. It claims to have a qualifying relationship with Digit 5 S.A. de C.V., located in Mexico. The petitioner seeks to employ the beneficiary as its Vice President of Operations. 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 concluding that the petitioner failed to establish: (1) that it will employ the beneficiary in a qualifying managerial or executive capacity; and (2) that it has a qualifying relationship with the beneficiary's foreign employer. In denying the petition, the director advised the petitioner as follows: "Your record holds derogatory information you may not have known about which USCIS will consider in making a decision on your petition." The director discussed the information and evidence that he deemed to be derogatory, stated that the credibility of the petitioner's documentation was in question, and reached the following conclusion:

The evidence on file submitted by the petitioner failed to overcome the above information[.] USCIS hereby denies the petition with a finding of fraud or misrepresentation. Moreover, the petitioner's withdrawal of the instant petition is not accompanied by evidence to rebut the derogatory information outlined above.¹

On appeal, counsel for the petitioner disputes "any and all conclusory findings by USCIS indicating findings of fraud."

Upon review of the record and the director's decision, the director's introduction of derogatory information unknown to the petitioner in the notice of decision was contrary to regulatory requirements. Accordingly, the decision will be withdrawn and the matter will be remanded to the service center for further action and entry of a new decision.

The regulation at 8 C.F.R. § 103.2(b)(16) provides:

- (i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of the fact and offered an opportunity to rebut the information and present information on his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii),(iii) and

¹ The record reflects that the petitioner in this matter did not request that the petition be withdrawn.

(iv) of this section. Any explanation, rebuttal or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on January 20, 2011. The director issued a request for evidence on June 27, 2011, and petitioner responded on August 1, 2011. The director did not issue a second notice advising the petitioner of derogatory information of which it was not aware. Instead, the director informed the petitioner of the derogatory information which formed the basis of the denial and the finding of fraud or misrepresentation in the notice of decision dated March 11, 2013.

As the petitioner was not afforded an opportunity to review and rebut the derogatory information prior to the issuance of the decision, as required by 8 C.F.R. § 103.2(b)(16), the decision dated March 11, 2013 was improperly rendered and is hereby withdrawn.

The matter will be remanded to the director, who is instructed to issue a notice of intent to deny in which the petitioner shall be informed of any and all derogatory information on which USCIS may rely to deny the petition or to issue a finding of fraud or material misrepresentation. The petitioner shall be granted an opportunity in which to rebut the information and/or submit additional evidence on its own behalf before a new decision is rendered.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for the purposes of issuing a notice of intent to deny advising the petitioner of the derogatory information and for the entry of a new decision, which, if adverse, shall be certified to the AAO.