



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: SRC 02 210 51751 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

[Redacted]

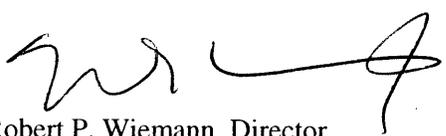
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision 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, Director
Administrative Appeals Office

DISCUSSION: The director denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner seeks to employ the beneficiary as a senior design engineer and, therefore, endeavors to classify him as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because neither the beneficiary's foreign employment nor his proposed U.S. employment is in an executive or managerial capacity.

On appeal, counsel submits a brief and additional evidence.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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.

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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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 an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it is in the corporate group of Transocean, Inc., a corporation of the Cayman Islands that is engaged in offshore drilling. The petitioner states on the I-140 petition that Transocean, Inc. employs approximately 14,000 persons worldwide, including the beneficiary who is currently occupying the proffered position as an intracompany transferee (L-1A). The petitioner is seeking to employ the beneficiary permanently at a salary of \$5,722 per month.

The issues to be discussed in this proceeding are whether the beneficiary's job with the foreign entity and his proposed U.S. position fit the definition of managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

When filing the I-140 petition, the petitioner indicated that the beneficiary's foreign employment was as a project electrical engineer from April 1998 to July 2000. The petitioner described the beneficiary's job as follows:

In this position, he was a member of [a] design team from an ultra deepwater dynamic positioning semi-submersible drilling rigs [sic] new builds, where he was responsible for rig

technical design, specification, Class approval, procurement, construction, commissioning and operational hand-over phases. He also supervises [sic] other design engineers, [and] could recommend the hire/fire, promotion and leave authorization for personnel.

When describing the proffered position of senior design engineer, the petitioner provided the following list of the proposed duties:

1. Assist the Engineering Discipline Manager or Project Manager in solving engineering design and analysis problems.
2. Provide solution[s] to complex engineering design and analysis problems.
3. Coordinates [sic] the work of drafters and technicians to ensure the qualify [sic] of work meets the design criteria.
4. Provide support to the Operations and Marketing groups with regard to engineering and inspection activities.
5. Review and approve engineering drawings and calculations in compliance with contract specifications, Classification and Regulatory Rules and incorporation of adequate standards of safety.
6. Perform inspections and amend tests of construction work to ensure compliance with approved drawings, workmanship standards and contract specifications.
7. Organize technical discussions with subcontractors and vendors in order to specify designs or systems necessary for an engineering project.
8. Evaluate existing designs of engineering systems to determine the operational effectiveness, safety and relative cost of such systems. Make recommendations where applicable.
9. Supervise design engineer(s), CAD drafter(s) and technician(s), contractors, fabricators and vendor service personnel.
10. Responsible for budget ranging from \$0 to \$5 million.
11. Submit any suggestion for the improvement and/or prevention of potential problems in the Project Quality system, the Project design/development and installation processes and the Company Safety system.

The director was not satisfied with the initial evidence presented. Therefore, in a July 14, 2002 request for evidence (RFE), the director asked the petitioner to submit evidence relating to the beneficiary's foreign and U.S. employment, including a description of his actual job responsibilities in each position, the percentage of time spent on each position's duties, and the beneficiary's subordinates' names, job titles and job descriptions.

In response, the petitioner submitted what looked like generic position descriptions from the human resources department. The petitioner also submitted organizational charts. The petitioner did not submit, however, the job descriptions for the beneficiary's subordinate employees, and the petitioner failed to indicate the percentage of time that the beneficiary spent on each position's duties.

The director denied the position, in part, because the beneficiary's foreign employment was not in a managerial or executive capacity. Citing *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988), the director determined that the beneficiary actually performed design engineer tasks rather than managed the performance of those tasks by others.

On appeal, counsel states that the beneficiary's foreign and U.S. employment are in a managerial capacity. To support his assertions, counsel submits an affidavit from the petitioner's Vice President of Human Resources. This affidavit describes the beneficiary's overseas and U.S. positions in more detail. In addition, the petitioner submits a list of the beneficiary's job duties in each position and indicates the percentage of the beneficiary's time that will be spent performing each duty.

The director's decision to deny the petition will not be overturned because the AAO will not consider the petitioner's evidence on appeal. As stated earlier in this decision, the director requested information about the percentage of time that the beneficiary devotes to the duties of each position as well as the job descriptions of his subordinate employees. The petitioner submitted an organizational chart; however, it failed to describe the job duties of its employees or describe the percentage of time that the beneficiary devoted to each duty. Now on appeal, the petitioner presents the percentages of time; however, it still does not describe the job duties of the beneficiary's subordinate employees.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.