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U.S. Citizenship  
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FILE: EAC 02 152 53258 Office: VERMONT SERVICE CENTER Date SEP 22 2014

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

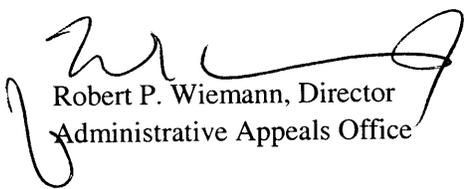
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, 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 is a New York corporation that seeks to employ the beneficiary as its president/principal manager. The petitioner, therefore, endeavors to classify the beneficiary 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 the proffered position in the United States is not in an executive or managerial capacity.

On appeal, counsel submits a brief statement.

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: (1) is a subsidiary of the Sonlux Company, located in Moscow, Russia; (2) distributes products of an undisclosed nature; and (3) employs four persons, 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 \$52,000 per year.

The issue to be discussed in this proceeding is whether the beneficiary's proposed employment with the U.S. entity is in a 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 described the beneficiary's job as follows:

[T]he Beneficiary's duties include the management and coordination of the Petitioner's global purchase activities, ensuring ongoing understanding between vendors and customers, hiring and supervising professionals, [and] leading the company's management on a daily basis so that [the petitioner] could effectively and entirely integrate into the American marketplace.

The director was not satisfied with the initial evidence presented. Therefore, in a July 16, 2002 request for evidence (RFE), the director asked the petitioner to submit evidence relating to the beneficiary's proposed duties, including a description of his actual job responsibilities and an hourly breakdown of each of the beneficiary's proposed duties. The director also requested the petitioner's 2000 and 2001 federal income tax returns, W-2 forms, and 1099-MISC forms.

In response, the petitioner stated the following about the beneficiary's responsibilities:

As Principal Manager of our company, [the beneficiary] uses his independent discretion and authority in developing strong and mutual relationships with the foreign officials, underwriters, and other high-level sources in the distributing products field. In identifying, developing and maintaining these sources, [the beneficiary] ensures that [the petitioner] is provided immediate first-hand information on conversion of products from American to foreign standards and from foreign to American standards and specifications to ensure efficient operation under foreign conditions. [The beneficiary] directs the negotiation of these contracts with foreign and [sic] distribution centers based on the conditions and special features provided. In addition, [the beneficiary] oversees sales and service products of the company. [The beneficiary] dedicates approximately 70% of his time performing these functions.

Within [the petitioner], [the beneficiary] also meets with staff members to direct the identification, modification, and development that improve [the] company's capabilities to meet client[s'] and business partners' needs. This includes providing guidance in the expediting of distribution arrangements and maintaining current information regarding tariffs, licenses, restrictions, etc. [The beneficiary] oversees the clerical staff in expediting correspondence, doing requests, and credit collection. [The beneficiary] spends approximately 30% of his time handling this responsibility.

The petitioner also submitted copies of its 2001 W-2 forms. These forms indicated that the petitioner paid wages to six persons, including the beneficiary. The wages of each employee were: \$295; \$474; \$7,385; \$10,066; \$24,397; and \$43, 018.82 (the beneficiary). Although the forms listed the names of the individuals, there is no information in the record about the titles or job responsibilities of these employees.

The director denied the position because the proffered position is not in a managerial or executive capacity. The director noted the salaries of the employees other than the beneficiary and concluded that the petitioner does not have an adequate staff to relieve the beneficiary from performing nonqualifying duties.

On appeal, counsel states that the beneficiary "will not directly manage subordinates," claiming that the beneficiary will manage an essential function. According to counsel, the beneficiary is the senior-level person in the U.S. operation who will be responsible for expanding, organizing and directing the company. Counsel asserts that the beneficiary will spend 70 percent of his time "exercising his discretionary authority in foreign sales and service outlets of the company," and the remaining 30 percent of his time will be spent with staff members.

The evidence in the record fails to establish that the proffered position is in a managerial or executive capacity. As stated previously, the petitioner is required to furnish a job offer in the form of a statement that clearly describes the duties to be performed by the beneficiary. 8 C.F.R. § 204.5(j)(5). Here, the record is replete with vague descriptions of the job duties that the beneficiary would be required to perform. In its description of the beneficiary's job duties, the petitioner indicated that 70 percent of the beneficiary's time would be spent negotiating contracts and "developing strong and mutual relationships" with clients. There is no clarifying information regarding how contract negotiation and client development relate to the responsibilities specified in the definition of managerial or executive capacity. Although counsel maintains that the beneficiary will manage an essential function, counsel does not identify what particular function the beneficiary will manage and how it is essential to the petitioner's operations. In addition, counsel's claim on appeal that the beneficiary will not directly manage subordinates, but will instead manage an essential function, is inconsistent with the petitioner's statement that the beneficiary "oversees the clerical staff."

In the denial letter, the director noted the size of the petitioner's staff and concluded that there are an insufficient number of employees to relieve the beneficiary from performing nonqualifying duties. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The record is devoid of any information regarding the five individuals whom the petitioner employs in addition to the beneficiary. CIS is unaware of each person's title, job responsibilities, and his or her place in the organizational hierarchy. The only information that CIS has is each individual's salary for the 2001 calendar year. These salaries are \$295, \$474, \$7,385, \$10,066, and \$24,397; only one of the five individuals worked full-time for the petitioner in 2001. Based on the individuals' salaries alone, it would appear that the beneficiary performs the tasks necessary for the petitioner to provide its services rather than manages or directs the provision of its services. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988). The absence of evidence illustrating how the petitioner's staff is organized and who performs the petitioner's daily business activities does not enable CIS to find that the beneficiary primarily engages in managerial or executive duties.

Accordingly, the position offered to the beneficiary is not in an executive or managerial capacity, and the director's decision to deny the petition on this basis shall not be disturbed.

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.