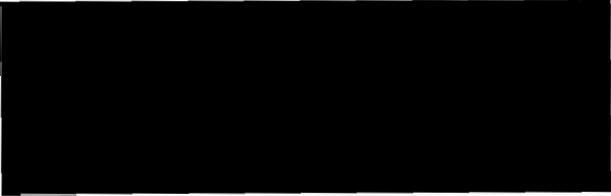




U.S. Citizenship
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FILE: LIN 05 027 52865 Office: NEBRASKA SERVICE CENTER Date: JUN 01 2006

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: SELF-REPRESENTED

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, Nebraska Service Center. The petitioner filed an appeal seeking to overcome the director's findings. As the appeal was untimely filed, the director treated it as a motion to reopen, which he then dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Michigan corporation operating as an importer, exporter, distributor, and retailer of European food and beverages.¹ It seeks to employ the beneficiary as its chief executive officer. 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 based on two independent grounds of ineligibility: 1) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 2) the beneficiary would not be employed in the United States in a managerial or executive capacity. The director subsequently reviewed the petitioner's submissions as part of a motion to reopen, which the director dismissed based on the determination that the new evidence provided by the petitioner on appeal failed to overcome either of the director's findings.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

On appeal from the director's latest decision, the petitioner provides the identical statement as the one previously submitted on motion, asserting that the beneficiary's education and work experience establish that the beneficiary was employed abroad in a qualifying capacity. However, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

With regard to the beneficiary's employment with the U.S. petitioner, the beneficiary focuses on his overall position with the company's hierarchy and his various business achievements thus far. However, the director's latest decision was based on the petitioner's failure to provide new facts or evidence establishing that the beneficiary's day-to-day duties would be within a managerial or executive capacity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103.

None of the information provided on appeal in the instant matter suggests that the submissions before the director at the time the motion was filed were sufficient to overcome either of the director's grounds for denying the petition.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See

¹ It should be noted that, according to the Michigan State corporate records, the petitioner's corporate status in Michigan has been automatically dissolved. Although the reason for this automatic dissolution is unclear, it raises the issue of the company's continued existence as a legal entity in the United States.

Spencer Enterprises, Inc. v. United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.