

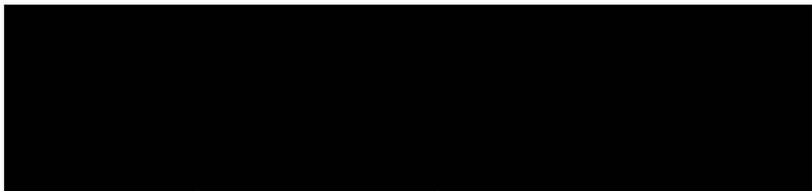
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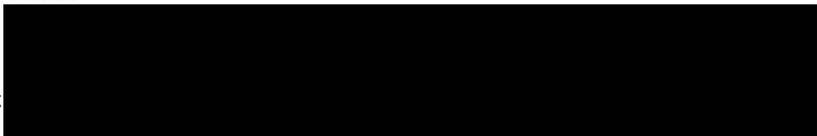
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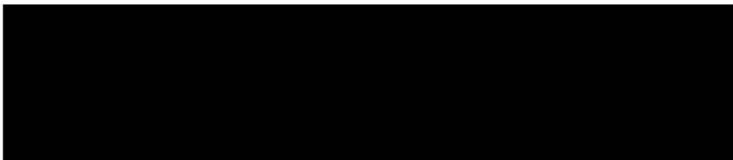
Office: TEXAS SERVICE CENTER Date: MAR 31 2006

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:



**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 preference visa petition was denied by the Director, Texas Service Center. 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 a real estate acquisition company. It seeks to employ the beneficiary as its acquisition manager. 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 the following independent grounds of ineligibility: 1) the beneficiary was not employed abroad in a qualifying managerial or executive capacity; 2) the beneficiary would not be employed in the United States in a managerial or executive capacity; and 3) the petitioner failed to establish that the foreign parent organization continues to do business.

On appeal, counsel disputes the director's conclusions and submits evidence, which the AAO deems sufficient to overcome the third ground for the director's denial.

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.

The language of the statute is specific in limiting this provision 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.

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 as a multinational executive or manager. 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 which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

As the petitioner has overcome the third ground for denial, the AAO will address the two remaining issues in this proceeding in an effort to determine whether the beneficiary has been employed abroad and would be employed in the United States 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.

In support of the petition, the petitioner submitted a letter dated January 28, 2005, stating that the beneficiary's primary function both abroad and in the United States is the oversight of real estate acquisition activities. The petitioner also provided nearly identical descriptions of the beneficiary's past and proposed duties.

On April 26, 2005, the director issued a request for additional evidence (RFE) instructing the petitioner to submit a copy of its organizational chart and a detailed description of the beneficiary's past and proposed job duties accompanied by a percentage breakdown of time that has been and would be spent executing each job duty. The petitioner was also asked to identify the beneficiary's subordinates and to provide their job titles,

job duties, and educational levels. Additional documentation was also requested in the form of the petitioner's wage reports for each quarter in 2005.

The petitioner responded with a letter dated July 18, 2005, which contained a list describing each of the documents submitted in response to the RFE. The exhibits included the following list of the beneficiary's proposed duties (which mirrors the list of the duties performed by the beneficiary abroad):

- Managing and developing strong customer relationships; approximately 10%
- Managing and conducting customer negotiations and closing deals; approximately 15%
- Managing and conducting analysis of acquisitions; approximately 15%
- Structuring agreements of purchase and sale and tenant leases; approximately 5%
- Managing and procuring the financing of vehicles; approximately 5%
- Managing the location of land in accordance with suitable geographic, size and zoning requirements; approximately 5%
- Coordinating with architectural, engineering groups and outside companies to design facilities in accordance to the companies specialized requirements; approximately 10%
- Coordinating and meeting with various [t]own and [c]ity departments in order to steer projects through various approval hurdles, and amendments necessary to obtain site plan approvals and building permits; approximately 5%
- Coordinating the tender process to fine tune and select appropriate, qualified trades for the construction of these projects; approximately 10%
- Managing all aspects of failure analysis; approximately 10%
- Managing, coordinating, developing and implementing sales and acquisition strategies; approximately 10%
- Furthermore, the above duties require planning, organization, coordination, direction and utilization of time effectively, the ability to communicate effectively, the ability to make on-the-spot decisions, effective communications with field counterparts, the ability to use discretion in dealing with customers; the ability to train [our] employees in technical matters; and the ability to exercise strong follow-up practices and be a team player.

The petitioner also provided a list of the ten employees it employed as of July 7, 2005, including each individual's name, position title, and educational level. The list indicates that eight out of the ten employees carried out maintenance or security related duties. The two remaining employees possessed managerial or supervisory titles. Although requested to do so, the petitioner failed to illustrate the staffing levels of the

personnel within the organization; nor did the petitioner provide the requested list of job duties for its employees.

On August 10, 2005, the director denied the petition concluding that the beneficiary's foreign and U.S. job duties suggest that the beneficiary was not employed abroad and would not be employed in the U.S. in a qualifying managerial or executive capacity. Specifically, the director stated that the petitioner lacked employees to actually carry out the duties the beneficiary would purportedly manage.

On appeal, counsel repeats the previously provided description of the beneficiary's duties, claiming that the beneficiary manages the petitioner's essential function of real estate acquisition.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See § 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, counsel repeatedly states that the beneficiary has been and will continue to manage and coordinate the activities that support the essential function of real estate acquisition. However, there is no indication of a support staff to actually perform the operational duties that are related to the essential function. Rather, the beneficiary's description of duties strongly suggests that the beneficiary has been and will continue to be the one to carry out the essential, though nonqualifying, operational tasks such as developing customer relations, negotiating deals with customers, analyzing various potential acquisitions, structuring purchase, sale, and leasing agreements, and ensuring financing for the petitioner's various acquisitions.

Although the petitioner indicates that the beneficiary's duties also include managing failure analysis as well as sales and acquisition strategies, there is no indication that the petitioner has employees to actually conduct the failure analysis or perform the necessary marketing and sales tasks that the beneficiary would purportedly manage. 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)).

Counsel further asserts that the director's reasoning makes it nearly impossible for a function manager to establish eligibility as a multinational manager or executive since supervising employees and not supervising any employees are both deemed non-managerial. However, counsel's circular reasoning strongly suggests a lack of understanding of the relevant statutory provisions and precedent case law. Section 101(a)(44)(A)(ii) of the Act makes clear provisions for a multinational manager who oversees the work of others so long as the beneficiary's direct subordinates are themselves supervisory, managerial, or professional employees. Section 101(a)(44)(A)(iii), on the other hand, makes clear provisions for a multinational manager that manages a function rather than personnel so long as the function manager functions at a senior level of the organization

or with respect to the function he manages. Counsel seemingly suggests that a function manager cannot manage an essential function without performing the tasks related to that function. However, counsel's argument suggests a complete disregard for precedent case law, which clearly states that the performance of the tasks necessary to produce a product or to provide services contradicts the very notion of managerial or executive capacity. *See Matter of Church Scientology International*, 19 I&N Dec. at 604. Regardless of the complexity or significance of the essential tasks, the petitioner must establish that it has sufficient support within its organizational structure to relieve the beneficiary from having to perform nonqualifying tasks. As applied to the petitioner's particular set of facts, the beneficiary can review an analysis of acquisitions without performing the analysis; he can review a negotiated contract without doing the negotiating; and he can oversee the creation of marketing and sales strategies without participating in the development of such strategies. The fact that the beneficiary is engaged in the performance of these nonqualifying tasks precludes him from establishing eligibility as a multinational manager or executive.

Counsel points out the heightened degree of discretionary authority bestowed upon the beneficiary as a result of his high level positions both abroad and in the United States. However, in examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In the instant matter, a significant portion of the beneficiary's duties, both abroad and with the U.S. petitioner, includes nonqualifying tasks. As such, the AAO cannot conclude that the beneficiary has been and would be primarily performing managerial or executive duties.

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