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U.S. Citizenship  
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Services

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FILE: [REDACTED] SRC 06 002 51332

Office: TEXAS SERVICE CENTER Date: **OCT 04 2006**

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, Chief  
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 Florida corporation operating as a dry cleaning business. It seeks to employ the beneficiary as its president. 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 determined that the petitioner would not employ the beneficiary in a managerial or executive capacity and denied the petition.

On appeal, counsel disputes the director's findings and submits a brief in support of his arguments.

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.

The primary issue in this proceeding is whether the beneficiary would be employed 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 Form I-140, the petitioner provided a letter dated August 8, 2005, which contained the following description of the beneficiary's proposed job responsibilities:

[The beneficiary] is responsible for planning, developing and establishing the policies and objectives of the business. His duties and responsibilities include conferring with company officials to plan business objectives and to develop organizational policies, reviewing activity reports and financial statements to determine progress, as well as planning and developing industrial, labor and public relations policies designed to improve the company's image and relations with customers and employees. He is also responsible for the overall success of [the] business at the initial location as well as overseeing the expansion of the business and successful operation of additional locations.

The petitioner also provided its organizational chart in which the beneficiary was shown at the top of the hierarchy. The beneficiary's immediate supervisor is a manager/counter operator whose subordinates include a spotter/presser, a launderer/presser, and four part-time pressers.

On October 31, 2005, the director issued a request for additional evidence (RFE) instructing the petitioner to provide a detailed description of the beneficiary's proposed day-to-day duties to assist in determining the beneficiary's employment capacity in the proposed position. The petitioner was also instructed to specify the duties to be performed and to assign a percentage of time that would be spent performing each duty.

In response counsel submitted a letter dated January 30, 2006, which contained a breakdown of job responsibilities and the percentage of time attributed to each of the respective responsibilities.<sup>1</sup>

After reviewing the petitioner's response to the RFE, the director issued a decision dated February 14, 2006 denying the petitioner's Form I-140. The director noted that several of the listed activities suggest that the beneficiary is not primarily performing managerial or executive duties and concluded that 70% of the beneficiary's tasks are non-qualifying. More specifically, the director stated that conducting market research, making appearances for public relations purposes, and visiting the dry cleaning operation to oversee the staff, tasks which consume 40% of the beneficiary's time, are non-qualifying.

On appeal, counsel quotes a portion of the director's decision stating that the decision is confusing and fails to convey a basis for denying the petitioner's Form I-140. While the typographical and grammatical errors in the director's decision admittedly interfere with a clear understanding of the analysis underlying the overall conclusion, the basis for the denial was adequately conveyed. It is the propriety of that conclusion that is the issue in this proceeding.

It must first be noted, however, that there are flaws in the director's analysis. While the director concluded that 70% of the beneficiary's time would be spent performing non-qualifying duties, the only duties specifically referenced in her discussion were those that would consume 40% of the beneficiary's time. Furthermore, the director's discussion suggests that the petitioner provided sufficient information regarding the beneficiary's daily tasks to enable an exact calculation of the amount of time attributed to specific duties. While the director's conclusion is correct, the AAO does not support her analysis.

In order to determine that 70% of the beneficiary's tasks would be non-qualifying, the petitioner would have to specify the actual tasks in a manner that adequately conveys an understanding of what the beneficiary would be doing on a daily basis within the scope of the petitioner's business. In examining the executive or managerial capacity of the beneficiary, Citizenship and Immigration Services (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, the record lacks the necessary information for the director's precise assessment. Regardless, the credibility of the job description provided by the petitioner is questionable at best. For instance, the AAO questions the likelihood that 20% of the beneficiary's time, which is approximately eight hours of a 40-hour week, would be spent meeting with the store manager, who is apparently the store cashier. The petitioner has not provided the specifics of what would be or would likely be discussed at such meetings; nor is there any indication as to where else the beneficiary could possibly spend the remainder of his time in light of the fact that the petitioner's sole business operation at the time the Form I-140 was filed was the dry cleaning store.

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<sup>1</sup> As the director included the full description in the denial, the AAO need not restate it in this decision.

Furthermore, as properly pointed out by the director, though admittedly in a confusing manner, the performance of market research in an effort to expand the petitioner's business operation cannot be deemed a qualifying duty. Although the petitioner's need for expansion from a single dry cleaning store is understandable, the fact that the beneficiary would be entirely responsible for the market research and any other duties involving the expansion of a business suggests that the petitioner lacks sufficient personnel to relieve the beneficiary from those and other non-qualifying tasks. The AAO does not dispute the significance of the beneficiary's role in expanding the petitioner's business operation. Rather, the AAO questions the types of duties the beneficiary would be required to perform when the petitioner's entire staff consists of employees whose sole purpose is to provide dry cleaning services. For instance, the record does not reveal who performs the administrative and bookkeeping tasks, which are a necessity in any business operation.

Counsel also asserts that the beneficiary is responsible for the petitioner's financial success, which requires the regular review of financial reports. However, the record is entirely unclear as to what financial reports, aside from the daily account balance, would be generated (and by whom) within the scope of a dry cleaning business. Similarly, the record is entirely unclear as to what public relations duties the beneficiary would perform.

Additionally, while the AAO sees the need to train the petitioner's employees to ensure their compliance with the environmental standards set by the Environmental Protection Agency, the idea that the beneficiary is required to attend seminars and subsequently train employees suggests another non-qualifying task that the beneficiary would be required to perform.

Lastly, counsel states that the beneficiary would spend 15% of his time "visiting the site" to observe the staff's performance. However, as previously indicated, the AAO is unaware of the petitioner's involvement in any business activity aside from the single dry cleaning operation. Thus, it is unclear what, aside from that operation, the beneficiary could actually be managing. Based on the petitioner's business at the time of the filing of the Form I-140, it appears that a majority of the duties the beneficiary would perform would be directly related to running a dry cleaning operation. Thus, the claim that the beneficiary would primarily perform managerial or executive duties is simply not supported by the evidence of record. It is noted that 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Although the record does not clearly delineate the beneficiary's day-to-day duties, the petitioner's dry cleaning operation lacks the organizational complexity to require an employee who would primarily perform managerial or executive duties. Accordingly, based on the evidence furnished, the petition may not be approved.

Furthermore, the record supports a finding of ineligibility based on additional grounds that were not previously addressed in the director's denial.

First, the record indicates that the petitioner was ineligible to file the Form I-140 pursuant to 8 C.F.R. § 204.5(j)(3)(i)(A) and (B), respectively. The former section, which applies to any alien who is outside the United States at the time the Form I-140 is filed on his or her behalf, states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to filing the Form I-140. If however, the alien is present in the United States at the time of filing, 8 C.F.R. § 204.5(j)(3)(i)(B) requires that the petitioner establish that the beneficiary was

employed abroad in a qualifying capacity for at least one out of the three years prior to the alien's entry into the United States as a nonimmigrant so long as the nonimmigrant entry was for the purpose of the alien's employment with the U.S. petitioner. In the instant matter, the beneficiary's Form G-325A, which was completed with his Form I-485 application for adjustment of status, states that the beneficiary entered the United States in 1999, but did not commence his employment with the U.S. petitioner until 2004, five years after he entered the United States. Therefore, the petitioner has failed to establish that the beneficiary was employed in a qualifying capacity abroad during the three years prior to his entering the United States to work for the petitioning organization.

Second, even if the AAO were to disregard the petitioner's ineligibility to file the instant petition, the record does not establish that the beneficiary's employment was within a qualifying capacity. The description of the beneficiary's position abroad lacks sufficient detail to determine what the beneficiary did on a daily basis and whether his duties were of a qualifying nature. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). As the petitioner has failed to specify actual duties performed by the beneficiary during his employment abroad, the AAO cannot conclude that he was employed in a qualifying capacity for the requisite time period.

Third, 8 C.F.R. § 204.5(j)(3)(i)(C) states that the petitioner must establish that it has a qualifying relationship with the beneficiary's foreign employer. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). 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)). In the instant matter, while the petitioner provided documentation indicating that it issued 100 shares of its stock to the beneficiary's foreign employer, there is no evidence that the foreign entity contributed any capital contribution or in fact paid for its ownership of the petitioner's stock. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Fourth, 8 C.F.R. § 204.5(j)(3)(i)(D) states that the petitioner must establish that it has been doing business for at least one year prior to filing the Form I-140. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." In the instant matter, the petitioner has not submitted sufficient evidence to establish that it had been conducting business on a "regular, systematic, and continuous" during the requisite time period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the three additional grounds of ineligibility as discussed above, this petition cannot be approved.

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 Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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.