



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **APR 24 2007**  
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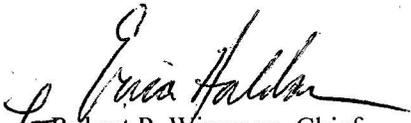
IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:  
[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based petition. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). The AAO withdrew the director's decision and remanded the matter to the director for further consideration and entry of a new decision. Following the petitioner's response to her request for evidence, the director denied the petition. The matter is again before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Texas that is engaged in the sale of jewelry. The petitioner seeks to employ the beneficiary as its president.

The director originally denied the petition concluding that the petitioner had not demonstrated that a qualifying relationship exists between the foreign and United States entities. In its review of the appeal, the AAO concluded that the petitioner had demonstrated the existence of an affiliate relationship between the foreign and United States entities. The AAO noted, however, that the petitioner had not established that the beneficiary had been employed by the foreign entity or would be employed by the United States company in a primarily managerial or executive capacity, and remanded the matter to the director for further consideration of these issues.

The director properly notified the petitioner of the deficiencies in the record pertaining to the nature of the beneficiary's foreign and present employment, and provided the petitioner an opportunity to submit additional evidence. The director ultimately denied the petition concluding that the petitioner had not demonstrated that the beneficiary had been employed abroad by the foreign entity or would be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner submits a statement challenging the director's findings related to the nature of the beneficiary's employment in the foreign and United States entities. Counsel indicated on the Form I-290B that he would submit an appellate brief within sixty days of filing the appeal. The AAO notes that on April 3, 2007, a request was sent to counsel via facsimile for an appellate brief or additional evidence. Counsel responded indicating that he did not file an additional brief or evidence in support of the instant appeal. Accordingly, the record will be considered complete.

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 or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and 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 two related issues in the present matter are whether the petitioner demonstrated that the beneficiary had occupied a primarily managerial or executive position in the foreign entity or whether the petitioner would employ the beneficiary in a primarily 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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 an undated letter appended to the petition, the petitioner stated that while employed abroad as the foreign company's general manager, the beneficiary oversaw and ran the corporation. The petitioner further stated:

[The beneficiary] [was] responsible for assessing, and analyzing any possible acquisition candidate, spending time understanding the dynamics of allied industry, while performing many directorial duties as the president of the company involving strategic planning, supervision, coordination and representation of the corporation. [The beneficiary's] responsibility include[d] direct[ing] and overseeing the total operation of the company, including the hir[ing], train[ing], supervis[ion], and fir[ing] of all employees, as well as making business decisions regarding any future growth, merger, or acquisition, and expansion plans.

The director subsequently requested in a March 24, 2006 notice that the petitioner provide a "definitive statement from the foreign company describing the job duties of the beneficiary," and addressing: the beneficiary's position title; job duties; the percentage of time devoted to each task; the subordinate managers, supervisors, or employees who reported directly to the beneficiary; and, the job title, educational levels, and job duties of the subordinate employees. The director also directed the petitioner to "submit evidence of the staffing level at the foreign company at the time the beneficiary was employed there."

Counsel for the petitioner responded in a letter dated June 20, 2006. In an attached June 16, 2006 letter, the foreign entity addressed the beneficiary's role as the "founder, president, and executive manager" of the foreign company, stating that as a result of its expansion into the United States, the beneficiary now "manages our funding, investment, and the company's progress, and activity through the store manager from the United States, who coordinates according to the instructions, and policies set by our president." The beneficiary was also described as making purchasing decisions, hiring and firing managers, planning, controlling and coordinating the foreign company's operations, and delegating responsibilities. The store manager of the foreign company also provided a brief statement allocating the time spent by the beneficiary "at this time" on responsibilities related to the foreign entity.

Counsel submitted a list of the workers employed by the foreign entity during the beneficiary's employment overseas, which were comprised of a store manager, and three sales assistants, as well as contracted consultants such as computer hardware and software managers and an accountant. Counsel further provided the resume for the store manager of the foreign entity.

In a July 18, 2006 decision, the director concluded that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. The director noted that the job descriptions offered by the petitioner, in addition to incorporating "general terms," failed to indicate the amount of time the beneficiary spent performing each of his job duties while employed by the foreign entity. The director also noted an unresolved discrepancy in the representations of the foreign

entity's staffing levels, stating that the organizational chart submitted with the petitioner's original filing identified the employment of two technical assistants in addition to the five employees and three outside consultants. The director concluded that the beneficiary had not been relieved from performing the day-to-day duties of the foreign company, and consequently, denied the petition.

In his statement on appeal, counsel for the petitioner contends:

- Director's decision to deny is in error based on the reason indicated in the notice alleging the failure of [the] foreign company in providing the percentage of time for the beneficiary as the two page letter of June 16, 2006 complied with this request.
- Director's decision is in error based on a finding that the beneficiary's time percentage are not provided at the foreign company at the time of petition filing because it was not requested, as [the] Request for Evidence (RFE) dated March 24, 2006 clearly requested only the job duties at the foreign entity without specifying the present time or the past. The only item requested from the time [the] beneficiary was there was the staffing level as indicated on page two of RFE (please see attached).
- Director's decision is in error based on the [sic] her subjective opinion that the terms of duties, and involvements of [the] [b]eneficiary are in 'general terms,' and 'vague and general in scope,' failing to adhere to her own directive in providing a list of all duties, and not clarifying what if any additional details were required, or if a day in [the] life of executive narrative was required.
- Director's decision to deny is flawed in that she now discounts the time spent on managerial/executive duties is diminished by actual time devoted to these functions based on (in her opinion) limited number of employees in contrast to the real world operation of a business without providing a legal basis for her interpretation, and conclusions.

\* \* \*

- Director's decision fails to recognize her own conclusion that the beneficiary who is the president, founder, and executive manager of [the] foreign company based on undisputed letter from the foreign company, indicating that the beneficiary spends 5% of his total time on [the] foreign operation as a failure to provide the same as being requested on the RFE.
- Director's decision is also in error for assuming that [the] staffing level in [the] foreign company translates in [the] beneficiary being involved in the day[-]to[-]day operation of business some 6,000 miles away while due to global economy downturn some activities are outsourced since 2002, without taking administrative notice of outsourcing by most companies globally.

Upon review, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

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. § 214.2(1)(3)(ii). The AAO stresses that the analysis of

the beneficiary's employment capacity in the foreign entity requires a review of the job duties performed by the beneficiary during his employment with the foreign entity. The statute and regulations require the petitioner to demonstrate that the beneficiary was employed overseas in a primarily managerial or executive capacity for at least one year during the three years *preceding his entry into the United States as a nonimmigrant*. See § 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(B).

Counsel's blanket claims on appeal of the director's errors in her analysis of the beneficiary's former employment capacity are not sufficient to overcome the finding that the beneficiary was not occupying a primarily managerial or executive capacity in the foreign entity. As correctly noted by the director, the capacity in which the beneficiary was employed by the foreign entity cannot be ascertained from the general job descriptions offered by the petitioner and the foreign entity, which largely address the responsibilities claimed to be held by the beneficiary while employed in the United States. The job description offered by the petitioner with its initial filing only generally discussed how the beneficiary will continue his work as president of the foreign entity while employed in the United States, and indicated that the beneficiary performed "many directorial duties," including "strategic planning, supervision, coordination and representation of the corporation," making personnel decisions, deciding relevant "macro environmental trends," and finalizing long-term business goals. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will 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).

Counsel does not seem to acknowledge the requirement of establishing the beneficiary's former employment capacity at the time of filing the immigrant visa petition. Counsel challenges on appeal that the job description submitted in response to the director's request for evidence is sufficient to establish the beneficiary's former employment in a primarily managerial or executive capacity, and claims the director did not specify whether the job duties should related to "the present time or the past." Again, the statute and regulations clearly outline the petitioner's obligation to establish the beneficiary's prior overseas employment in a primarily managerial or executive capacity, which is satisfied through detailed and specific evidence of the managerial or executive job duties performed by the beneficiary while employed by the foreign entity prior to his transfer to the United States. See § 203(b)(1)(C) of the Act and 8 C.F.R. § 204.5(j)(3)(B); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (finding that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts). In light of this well-established requirement, counsel's suggestion that the beneficiary's concurrent employment with the petitioning and foreign entities at the time of the appeal fulfilled this eligibility requirement is misplaced and inappropriate. The record lacks sufficient detail of whether, prior to his entrance into the United States as a nonimmigrant, the beneficiary's overseas employment comprised primarily managerial or executive job duties.

The AAO notes that despite the director's note of the deficient record, counsel did not attempt on appeal to supplement the record with a detailed description of the beneficiary's employment in the foreign company prior to his transfer to the United States. Nor did counsel explain the inconsistencies in the foreign entity's staffing levels noted by the director in her July 18, 2006 decision. Counsel's general objections to the director's denial are insufficient to overcome the well-founded and logical conclusions the director reached based on a review of the record. Without documentary evidence to support the claim, the assertions of

counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the above discussion, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO will next consider whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

In her July 18, 2006 decision, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director stated that the description offered of the beneficiary's proposed job duties was "vague and general in scope," and did not depict the day-to-day job duties to be performed by the beneficiary. The director recognized the petitioner's four-person staff at the time of filing, noting that it appeared that one of the workers was employed on a part-time basis, and stated that it is questionable whether the beneficiary would be performing primarily managerial or executive job duties. The director also noted that while the petitioner submitted its employees' resumes, it did not provide the requested job descriptions of each position. The director concluded that the present record did not establish the beneficiary's proposed employment in a primarily managerial or executive position. Accordingly, the director denied the petition.

With respect to the beneficiary's employment in the United States entity, counsel contends on appeal:

- Director's decision is ignorant of her own directive on the RFE in providing a brief description of employees job duties, and now alleging that a job description for employees was not provided, while the same was included with their resume's [sic].

\* \* \*

- Director's decision is also in error in that she mis-characterizes the evidence, and explanation submitted by the petitioner in regards to the nature of his involvement in the daily operation of [the] U.S. entity which includes his direction of [the] V.P., and [the] store managers in addition to overseeing the three branches.
- Director's decision is also flawed based on the assumption that an employee either worked part[-]time [or] did not work at all, while the issue was not raised on the RFE for proper response, but the U.S. entity had lost an employee due to death of the employee during the year, and not considering the fact that the petitioner now employs seven people as outlined on the petitioning entity's letter.

Counsel's general objections on appeal to the director's analysis of the instant issue are not sufficient to establish the beneficiary's eligibility for the requested immigrant visa classification.

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 petitioner's initial job description falls considerably short of establishing the beneficiary's employment in a primarily managerial or executive capacity, as it outlines such broad job responsibilities as: (1) investigating business opportunities and setting personnel policies, and reporting to the parent company, 20%; (2) hiring, firing, training and supervising managers, reviewing employees' work performance, setting corporate goals, and overseeing the operation of the business, 30%; (3) communicating with attorney, accountants, vendors and providers, 15%; (4) acting as a liaison between the United States and foreign corporations to standardize marketing and development functions, 5%; (5) representing the petitioner at trade shows and tracking industry changes, 20%; and (6) mentoring and counseling management and employees, 10%. The AAO notes that these responsibilities and the time devoted to each vary considerably from the evidence offered by the petitioner in its response to the director's subsequent request for evidence related to the beneficiary's employment capacity. When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. Again, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. at 49.

Counsel did not submit on appeal a supplemental statement describing the beneficiary's specific managerial or executive job duties at the time of filing. His general claims of the director's error in mischaracterizing the petitioner's representations of the beneficiary's primarily managerial or executive employment in the United States are not sufficient to meet the eligibility requirements outlined in the statute and regulations. See §§ 101(a)(44)(A) and (B) of the Act (defining the statutory definitions of "managerial capacity" and "executive capacity"; see also 8 C.F.R. § 204.5(j)(5) (requiring that the petitioner clearly describe the managerial or executive job duties to be performed by the beneficiary in the United States). Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534.

Counsel further challenges on appeal that the death of an employee during the year 2004 resulted in the director's incorrect assumption that the petitioner employed a part-time worker, and that the director failed to consider the petitioner's current staff of seven workers. Again, the petitioner's present staffing levels are not relevant or probative of the beneficiary's proposed employment capacity at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, notwithstanding the purported death of an employee, counsel did not document how the staffing levels maintained by the petitioner on the filing date would satisfy its reasonable needs while employing the beneficiary in a primarily managerial or executive capacity. Counsel's general objections without additional evidence clarifying how the beneficiary's proposed position would be managerial or executive in nature, prevents a finding that the beneficiary would be employed as a manager or executive of the United States entity. Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The record as presently constituted does not establish the beneficiary's eligibility for this immigrant visa classification. Accordingly, for this additional reason, the appeal will be dismissed.

The AAO recognizes that Citizenship and Immigration Services (CIS) previously approved two L-1A nonimmigrant visa petitions filed by the petitioner on behalf of the beneficiary. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. See, e.g., *Q*

*Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Furthermore, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approvals and denying the immigrant petition.

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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.