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Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

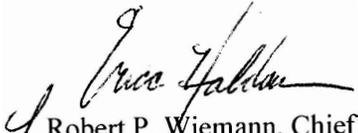
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Nebraska Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant 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 Delaware that is operating as a supplier of interior automotive lighting products. The petitioner seeks to employ the beneficiary as its automotive globalization project manager.

The director denied the petition concluding that the petitioner had not established that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity or that the beneficiary would occupy a position primarily managerial or executive in nature in the United States organization.

On appeal, counsel for the petitioner contends that the petitioner has demonstrated the beneficiary's eligibility for the requested immigrant visa classification. In support of the appeal, counsel submits an appellate brief and a letter from the petitioning entity addressing the beneficiary's employment in the United States organization.

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 first issue in this proceeding is whether the beneficiary was employed by the foreign entity 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 a March 23, 2006 decision, the director concluded that the petitioner had not demonstrated that the beneficiary had been employed by the foreign organization in a primarily managerial or executive capacity. The director outlined the three job responsibilities attributed to the beneficiary's former position as manager of the foreign entity's knowledge transfer team, but concluded that the provided description "does not adequately define the beneficiary's actual duties, such as what was involved in program management or his specific duties regarding product demonstration." The director further noted uncertainty as to why the beneficiary's responsibilities of "demonstrating products" or "preparing an engineering plan" would be considered primarily managerial or executive in nature. Consequently, the director denied the petition.

In his appellate brief, counsel contends only that the beneficiary's employment as a manager of the foreign entity is "in compliance with the [statutory] requirements to make him eligible to be a candidate for an I-140 petition." In an attached May 26, 2006 letter, counsel references a letter from the foreign entity to supplement the job description originally offered for the beneficiary's foreign employment, but notes that it "is not yet available and will be sent under separate letterhead." As of this date, counsel has not submitted any additional documentary evidence in support of the instant appeal. As a result, the record will be considered complete.

The petitioner has not demonstrated on appeal that the beneficiary had been employed by the foreign organization in a primarily managerial or executive capacity. Counsel's blanket claim on appeal of the beneficiary's eligibility for classification as a multinational manager or executive, without specifically identifying the managerial or executive job duties performed by the beneficiary as manager of the foreign entity's knowledge transfer team, does not overcome the well-founded and logical conclusions the director reached based on a review of the record. 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).

The AAO concurs with the director's denial of the petition based on the petitioner's failure to specifically document the managerial or executive job duties primarily performed by the beneficiary in the foreign entity, particularly in light of the director's request for "a detailed, comprehensive [job] description" and the specific amount of time the beneficiary would spend performing each task. The petitioner's limited statements that the beneficiary "prepared [a] plan to share advanced engineering technology between Europe and North America," presented products to North American marketing, sales and engineering groups, and managed the transfer of design, validation and tooling programs from a French manufacturing facility to the new facility in Mexico are simply insufficient to establish that the beneficiary occupied a primarily managerial or executive position in the overseas company. 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 did 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). The AAO notes that a petitioner's failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the appeal will be dismissed.

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

The petitioner filed the Form I-140 on September 28, 2005, noting that the beneficiary would occupy the position of automotive globalization project manager in the United States company. In an accompanying letter, dated July 29, 2005, the petitioner explained that the beneficiary oversees a "group" in the United States that is responsible for identifying products and technologies in the United States organization, as well as those in the United Kingdom, "that can be brought to the market place for a profit." The petitioner explained that "[t]he activities of this group will help eliminate waste and redundancies of efforts, unify and streamline communications between all global groups and our customers, and provide a common path to market profitable products now and in the future." The petitioner outlined the following job duties as being related to the beneficiary's employment in the United States:

- Managing the transfer of engineering and manufacturing expertise from Europe to North America.
- Meet with, on a regular basis, the New Jersey engineering group to share European products and technology.
Revisit Europe on a biannual basis to reverse information flow and keep-up with new advances in Europe.
Managed direct contact with European based companies starting manufacturing operations in North America for potential opportunities. These include Grupo and Faurecia.
- Provide direct management for a major target account – Johnson Controls International [(JCI)]. (\$15 million annual sales, growing at 12% per year)
 1. Establish a pricing and quotation formula for all products at JCI
 2. Manage all engineering activities related to Johnson Controls
 3. Visit customer in Holland, MI on a biweekly basis
 4. Manage all commercial activities including quotations, pricing, contracts, and communications between company and customer.
 5. Manage company resident engineer stationed at JCI in Holland.
 6. Manage meetings with JCI advanced engineering groups to develop future products.
 7. Manage and control all launch activities for new products at JCI[.]

The petitioner submitted documentary evidence that the beneficiary had completed the requirements to earn a degree in engineering.

On December 6, 2005, the director issued a request for evidence noting that the job description initially offered for the beneficiary's position in the United States company "relied on generalized language," and did not define his specific job duties. The director requested that the petitioner submit "a detailed, comprehensive description" clearly defining the job duties to be performed by the beneficiary and the amount of time the beneficiary would devote to each task. The director instructed the petitioner to describe and illustrate the positions occupied by the beneficiary and any subordinate employees in the petitioner's organizational hierarchy, and clearly identify the subordinates' job titles and job duties.

Counsel for the petitioner responded in a February 23, 2006 letter. In an appended February 23, 2006 letter, the petitioner noted its need to have the beneficiary continue as its program manager in order to "spearhead" and manage the process "of transferring knowledge, design ability and advanced engineering from our sister companies in Europe to our companies in the United States." The petitioner explained:

[The beneficiary's] group provides the inter-link between the [United States and United Kingdom] companies as a whole. He is responsible for ensuring the successful globalization of the automotive business through the integration of worldwide activities. The emphasis of this group is centered on the identification and sharing of products, technologies, and advanced engineering techniques throughout the organization worldwide.

The petitioner divided the beneficiary's responsibilities in the United States entity between two positions: manager of the knowledge transfer team and manager for program management in North America. The

responsibilities identified for each position are essentially the same as those previously listed in the petitioner's July 29, 2005 letter. With respect to the beneficiary's role in program management, the petitioner noted that the beneficiary would oversee two program managers, one of whom was stationed at Johnson Controls International.

In an attached organizational chart, the beneficiary was identified as the technology sharing/program manager overseeing a senior program manager and a program manager-quality engineer, both located in the United States.

In a decision dated March 23, 2006, the director concluded that the beneficiary would not be employed by the United States entity in a primarily managerial or executive capacity. The director outlined the job duties associated with the beneficiary's proposed position and stated that the "description relies heavily on broad, general terminology that does not adequately illustrate the beneficiary's actual duties." The director noted that the job description offered by the petitioner in response to his request for evidence restated the same job duties and "did not provide additional detail regarding either position or further define the claimed management duties." The director also noted that the petitioner had provided only minimal evidence of its organizational hierarchy, and failed to provide the job duties related to the positions held by the beneficiary's two subordinates. The director noted that without this evidence, the beneficiary could not be deemed to be managing professional, managerial or supervisory employees. Accordingly, the director denied the petition.

Counsel for the petitioner filed the instant appeal on April 21, 2006. In an appellate brief, counsel contends that the beneficiary would be employed in a primarily managerial capacity as he is "directly involved in the supervision of employees," and "has the authority to hire and fire those under his immediate control."

In an attached letter, dated May 25, 2006, the petitioner identified the beneficiary's employment as the company's manager of program development, during which he would manage "the launch of new programs" and the transfer of engineering knowledge. With respect to the beneficiary's management over the launch of new programs, the petitioner explains that the beneficiary "establishes objectives and targets both with customers and internally with subordinate [m]anagers," who the petitioner identified as including the previously identified senior program manager and program manager-quality engineer, as well as two managers who had purportedly been assigned to the beneficiary from the company's sales department. An attached organizational chart, which differs from the one previously submitted in response to the director's request for evidence, reflects the beneficiary's purported authority over these four individuals. The petitioner further explains that the beneficiary establishes the "internal time line" for the launching of new programs, "schedules, directs and attends all [p]rogram [r]eview [m]eetings and creates agendas on a per meeting basis," assigns tasks to his subordinate managers, approves design changes, and assigns tasks to managers in the following departments in order to ensure compliance "with the company agenda": tolling engineering, manufacturing engineering, design engineering, quality control, production control, finance, quality development, and manufacturing. The petitioner also explains:

If [the beneficiary] feels the project is critically off of the target for cost, timing, and product performance without immediate remediation he takes it to upper management for review [The beneficiary's] role in this regard is to prepare a business case that explains why his suggestion is made and to justify it with supporting documentation like quotes, returns on investment value analysis, etc. which he orders the managers of our departments to have prepared for him.

The petitioner notes that the beneficiary possesses authority for hiring, firing, promoting and delegating assignments to his subordinate managers, and works directly with the human resources department to recruit employees.

With respect to the beneficiary's assignment as manager of engineering knowledge transfer, the petitioner states:

Functioning autonomously[,] [the beneficiary] is responsible for managing activities directing the flow of engineering data through the associate engineering managers and routinely meeting with technical specialists to insure the corporate philosophy that 'knowledge and[e]ngineering transfer is understood, delivered and implemented accurately.' Also[,] he establishes and promotes the standardization of technical support and service base upon the corporate knowledge and engineering transfer model.

To this end[,] [the beneficiary] [works] regularly with our various [k]nowledge and [e]ngineering [m]anagers in the United States and Europe and their units to review their current policies and procedures in using the transferred data to ensure compulsory development practice in accordance with corporate policy. He deals with our foreign based facilities and companies on a continual and ongoing basis. In [s]ummary, [the beneficiary] has autonomous control over and exercises wide latitude and discretionary decision making in establishing the most advantageous courses of action for the successful management and direction of our [e]ngineering [k]nowledge [t]ransfer. [The beneficiary's] time is allocated about 60% to [m]anaging [the] [n]ew [l]aunch program and 40% to [m]anaging [e]ngineering [k]nowledge [t]ransfer.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The petitioner has not clarified the position in which the beneficiary would be employed by the United States entity. On the Form I-140, the petitioner identified the beneficiary as occupying the position of automotive globalization project manager, yet the petitioner subsequently addressed the beneficiary's proposed employment in the positions of program manager and manager of program development. While it is possible that the job duties are the same for each position, the petitioner's repeated inconsistent references to the position offered to the beneficiary complicate the analysis of determining the true capacity in which the petitioner would employ the beneficiary. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

When examining the executive or managerial capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

The job descriptions offered by the petitioner fail to clearly explain the beneficiary's employment in the United States entity and his related managerial or executive job duties. The petitioner represented that one of the beneficiary's primary responsibilities would be to "manage" the transfer of engineering and manufacturing knowledge from the organization in Europe to the United States. But, as noted by the director, the petitioner never explained the process in which the knowledge would be transferred, or, in other words, what tasks or functions the beneficiary would manage. The petitioner's general statements that the beneficiary would meet

with the petitioner's engineering groups and travel to Europe biannually "to reverse information flow and keep-up with new advances" fail to offer any clarification of the beneficiary's purported managerial or executive role over the "knowledge transfer team." The petitioner's additional explanation on appeal that the beneficiary would function autonomously in "managing activities directing the flow of engineering data" and reviewing the current policies and procedures of transferring data is not sufficient to explain how the beneficiary is acting in a managerial or executive position with respect to the transfer of engineering knowledge. 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).

The beneficiary's role in the company's program management, or the "launch of new programs" is equally unclear. In response to the director's request for evidence, the petitioner explains only that the responsibilities related to this area would be to "[m]anage (launch) programs" for such customers as Mercedes Benz and BMW, and oversee the "[p]rogram [m]anagement activities" of two program managers. The petitioner's extremely broad and nonspecific representations in no way explain what the beneficiary would do as the manager of program management. 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).

The AAO also notes that while the beneficiary is first identified as maintaining a role in the management of "a major target account" of the petitioner, specifically Johnson Controls International, the petitioner fails to expound on this responsibility in subsequent job descriptions. In its February 23, 2006 letter, the petitioner stated only that the beneficiary would manage a program manager based at JCI and "all new program launches there." On appeal, the petitioner neglects to even address the beneficiary's purported managerial authority over programs at JCI. 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. *Id.* at 1108. Based on the limited evidence provided by the petitioner, the beneficiary's purported managerial or executive responsibilities with respect to this function are not clear.

Furthermore, the job description offered for the beneficiary on appeal appears to have been broadened from his initial job description. In the original organizational chart, the beneficiary is identified as managing a senior program manager and a program manager/quality engineer. However, in its appellate brief and revised organizational chart, the petitioner identifies the beneficiary as overseeing four managers, which are represented on the organizational chart as the only four subordinate managers in the United States company. On appeal, 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 the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

These inconsistencies cast doubt on the petitioner's claim that the beneficiary would devote sixty percent of his time to managing its four managerial employees in the launch of new programs. Doubt cast on any aspect

of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the petitioner established the existence of a qualifying relationship between the foreign and United States entities on the date of filing.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

The record indicates that prior to his transfer in January 1999 to the United States entity, which the petitioner's president identified in a February 22, 2006 certification as doing business under the name of CML Innovative Technologies, Inc., the beneficiary was employed in France by the company SLI Miniature Lighting SA. The petitioner represents the beneficiary's foreign employer as being part of the "CML Innovative Technologies European group," which is "under the control of the president of CML Innovative Technologies." In a second February 22, 2006 certification, the company's president outlines the ownership of the petitioning entity and attaches an organizational chart of the petitioning entity and its purportedly related organizations. The petitioner did not submit additional documentary evidence of the claimed qualifying relationship between the United States entity and the beneficiary's foreign employer.

The record does not substantiate the petitioner's claim of a qualifying relationship between the foreign and United States entities. The petitioner did not clearly identify the existence of a relationship between the beneficiary's foreign employer and the United States company, other than to note their association as part of a "group." Also, the beneficiary's purported employer in France is not identified on the organizational chart of related companies. The AAO further notes ambiguity in whether the beneficiary's foreign employer is doing business as CML Innovative Technologies, SAS, the company referenced by the petitioner's president in his February 22, 2006 certification. Absent an additional explanation of the purported relationship between the foreign and United States entities, as well as evidence documenting the claimed relationship, the AAO cannot determine the existence of the required qualifying relationship. 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)). For this additional reason, the petition will be denied.

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).

The AAO recognizes the beneficiary's previously approved L-1A nonimmigrant petition. 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 approval 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.