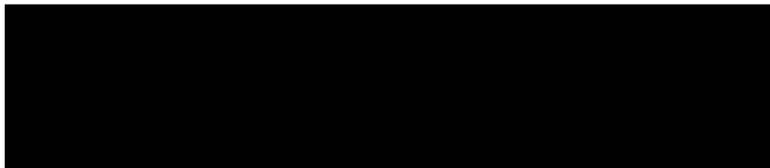




U.S. Citizenship
and Immigration
Services

B4



File: LIN 06 155 53875 Office: NEBRASKA SERVICE CENTER Date: SEP 06 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily 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, a Delaware corporation, is described as a global leader in integrated information technology solutions. The petitioner seeks to employ the beneficiary as its manager of technical services.

The director denied the petition on February 7, 2007, concluding that the petitioner failed to establish: (1) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity; and (2) that the beneficiary would be employed by the U.S. company in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal on March 12, 2007. In a letter dated March 8, 2007, counsel for the petitioner asserts:

This petition was wrongly decided based on the record submitted and the decision should be reconsidered and reversed and the petition approved. . . . The record is complete as to the detailed managerial nature of the beneficiary's duties and responsibilities both overseas and in the United States. The petition should have been approved.

Counsel indicated on Form I-290B that no brief or additional evidence would be submitted in support of the appeal.

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 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 that 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. *See* 8 C.F.R. § 204.5(j)(5).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded conclusions the director reached based on the evidence submitted by the petitioner. The director's decision included a detailed analysis of the beneficiary's previous and current job duties, outlined specific deficiencies in the evidence submitted, and explained why such evidence did not establish that the beneficiary had been and would be employed in a managerial or executive capacity. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Accordingly, the appeal will be summarily dismissed.

Contrary to counsel's statements, the evidence of record does not establish the beneficiary's eligibility for the requested visa classification. As noted by the director, the initial position descriptions provided for the beneficiary's previous Canada-based position as senior systems administrator, and for his current U.S. position as manager of technical services, both included a number of duties which do not fall under the statutory definitions of managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. Thus, while the petitioner designated the beneficiary as a "function manager," the record fails to establish that his actual duties had been or would be primarily managerial in nature. The petitioner indicated that the beneficiary's position with the foreign entity included implementation of company software, design and development of software configurations, analysis of customer systems, implementation of standard upgrades and new functionality, identification and resolution of "bugs," and ensuring that software upgrades coincide with customer's operating systems. Furthermore, the petitioner's initial description of the beneficiary's duties made no reference to the beneficiary's responsibility for supervising subordinate employees, while the petitioner later indicated that he supervised two system administrators. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner's description of the beneficiary's proposed U.S. duties also included non-managerial duties such as providing technical support to customers and staff on PC and server issues, troubleshooting network and e-mail problems, implementing system monitoring tools, and designing and developing servers. Therefore,

both positions appear to involve a number of technical duties that cannot be classified as managerial in nature. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner listed the beneficiary's duties as including both managerial and administrative or operational tasks, but failed to quantify the time the beneficiary spends on them. The director specifically addressed these deficiencies in a request for evidence issued on October 3, 2006, and asked that the petitioner delineate the specific duties and the proportion of time devoted to each duty for both the beneficiary's foreign and U.S. positions. Although the petitioner submitted a response to the director's request for evidence, it did not include the requested breakdown of the beneficiary's former and current duties.

This failure of documentation is important because several of the beneficiary's daily tasks, as noted above, do not fall directly under traditional managerial duties as defined in the statute. Any 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). For this reason, the record as presently constituted does not establish that the beneficiary has been or would be primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). As discussed above, neither counsel nor the petitioner has offered additional evidence on appeal to overcome the specific deficiencies noted by the director.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.