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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] OFFICE: NEBRASKA SERVICE CENTER Date: DEC 13 2004

IN RE: Petitioner: [redacted]
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: SELF-REPRESENTED

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a U.S. corporation that was established in 1989 and is in the construction business. It seeks to employ the beneficiary as its accounting 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 concluding that the beneficiary would not be employed in a managerial or executive capacity.

On appeal, the petitioner, through prior counsel, disputes the director's conclusions and submits a brief in support its assertions.

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):
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> * * *
>
> (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, 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 issue in this proceeding is whether the beneficiary would be employed in a capacity that is managerial or executive.

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 provided a letter, dated November 20, 2002, containing the following description of the beneficiary's proposed duties:

[The beneficiary] will supervise accounting functions including Accounts Payable, Accounts Receivable, Payroll, General Ledger and General Accounting. She will complete all monthly financial and cash forecasts and annual business plans after compiling and analyzing financial information and account entries for the general ledger accounts, assets, liabilities, and capital. [The beneficiary] will prepare balance sheets, profit and loss statements and other reports to summarize the company's current and projected financial position. Traditional accounting functions such [as] audit and preparing reports to substantiate transaction[s] will be performed. Finally, the Accounting Manager will be the project lead in the conversion of the current accounting systems to JD Edwards.

In a notice dated June 5, 2003, the director requested that the petitioner submit additional information including an organizational chart illustrating the beneficiary's position in the foreign organization. The petitioner was also instructed to provide a detailed description of the beneficiary's prospective position in the United States including her specific duties, the type of employees to be supervised, if any, and the title and level of authority of the beneficiary's immediate supervisor.

In response, the petitioner submitted a letter from James House, the treasurer and director of finance and accounting, who stated that the beneficiary was a function manager and identified the essential function as managing the foreign company's cash. [redacted] further stated that the beneficiary functioned at a senior level of the foreign company's organizational structure possessing authority over the day-to-day management of the company's cash flow. Attached to [redacted] letter was an organizational chart showing the beneficiary's position as one of two general accountants under his supervision. The chart also indicated that the beneficiary supervised two subordinates whose duties were briefly described in an attached letter. The petitioner also provided the following description of the beneficiary's duties in the United States:

> [The beneficiary] is responsible for total management of all accounting and treasury activities within our organization. She directly supervises four employees. These employees are [redacted]-Accounts Receivable/Job Cost/Facilities Manager/Local Taxes; [redacted]-Payroll/General Accounting; [redacted]—Acounts Payable/Subcontract Coordinator/General Accounting; and [redacted]-Receptionist/Accounting Support/Project Management Support.
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> [The beneficiary] is responsible for coordinating the accounting department and producing accurate and timely financial statements and management reports which are essential to the operation of our company. She has the authority to make discretionary decisions regarding her department and is responsible for setting policies and procedures and setting goals for her team. [She] is responsible to account for and forecast **$20 Million annual** revenues and **$18 Million annual** contract and overhead costs. She holds signing authority for the company and manages between **$1 to $2 Million monthly** in cash transactions. (Emphasis added in the original).

On July 30, 2003 the director denied the petition noting that the organizational charts submitted indicate that the beneficiary was acting as a first-line supervisor rather than a manager. The director concluded that the petitioner failed to submit sufficient evidence to establish that the beneficiary manages a function.

On appeal, the petitioner submits a brief and asserts that the beneficiary manages the essential function of cash flow management and cash forecasting. 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* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). When a petitioner claims that the beneficiary is managing an essential function, the petitioner must 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. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In the instant matter, the petitioner has submitted sufficient evidence establishing that cash flow management and forecasting are essential functions in the scheme of the petitioner's business. The AAO also does not dispute the beneficiary's authority to make decisions concerning this essential function. Contrary to assertions in the brief, James House's statements regarding the beneficiary's duties have been considered. However, the record lacks sufficient evidence to suggest that the beneficiary primarily manages, rather than performs, the essential function. The petitioner has repeatedly stated that the beneficiary's tasks would include performing audits and preparing reports, which the petitioner classified as "[t]raditional accounting functions." The beneficiary would also prepare balance sheets and profit and loss statements, as well as any other reports necessary to summarize the petitioner's finances. While these tasks are undeniably essential to the overall success of the petitioning organization, they are clearly the tasks of an accountant. Regardless of the professional nature of such a position, the fact that the beneficiary has been and would continue to actually perform accounting duties negates the claim that the beneficiary would act as a function manager.

The petitioner is correct in asserting that the beneficiary is not required to manage employees in order to qualify as a multinational manager or executive. However, in claiming that the beneficiary manages an essential function, it is crucial for the petitioner to establish that people other than the beneficiary actually perform the essential function, even if the beneficiary does not personally manage such individuals.

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). The fact that the beneficiary possesses a professional position title is not sufficient to establish that her duties would primarily be of a qualifying nature. In the instant case the description of the beneficiary's job duties suggests that the beneficiary would primarily perform the petitioner's accounting duties. Therefore, the AAO cannot affirmatively determine that the beneficiary would primarily perform managerial or executive duties. For this reason the petition cannot be approved.

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.