

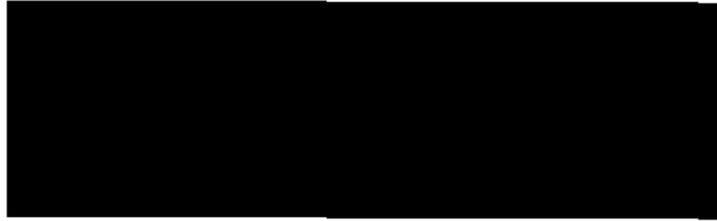
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B4

DATE: **JUL 13 2012** OFFICE: TEXAS SERVICE CENTER



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 matter will be remanded for further consideration.

The petitioner is a Texas corporation that seeks to employ the beneficiary in the position of general 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.

In reviewing the evidence on record, the director observed that the beneficiary's foreign and U.S. employers are not owned by the exact same group of individuals and that as a result the two entities do not have a qualifying relationship. The director therefore issued a decision dated September 30, 2010 denying the petition.

On appeal, counsel disputes the director's decision, contending that the same individual is the majority owner of both entities, thus indicating that the petitioner is an affiliate of the beneficiary's foreign employer.

The AAO has conducted a thorough review of the record and finds that counsel's statements are supported by the documentary evidence on record. Therefore, the director's decision is based on an erroneous legal finding and must be, and hereby is, withdrawn.

Notwithstanding the withdrawal of the director's decision, the AAO finds that the petitioner has not established eligibility for the immigration benefit sought. The AAO bases this finding on its review of the deficient job description the petitioner provided in its discussions of the beneficiary's proposed employment and its lack of a detailed account of the beneficiary's proposed day-to-day job duties. Published case law clearly supports the pivotal role of a clearly defined job description, as 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); *see also* 8 C.F.R. § 204.5(j)(5). Merely paraphrasing the statutory definitions and focusing on the beneficiary's policy making role, elevated position within the petitioner's organizational hierarchy, or her discretionary authority is not sufficient without a detailed account of the beneficiary's actual daily tasks. Failing to adequately describe the proposed employment precludes U.S. Citizenship and Immigration Services from being able to determine whether the U.S. position would be within a managerial or executive capacity.

Additionally, it is appropriate and often necessary to consider other relevant factors, such as an entity's organizational hierarchy, which shows the complexity of a given entity and the beneficiary's placement in relation to other employees, as well as an entity's overall staffing, which allows USCIS to assess the extent to which the petitioner is or was able to relieve the beneficiary from having to focus the primary portion of her time on the performance of non-qualifying operational tasks.

Accordingly, the case will be remanded for a new decision, which shall take into consideration the beneficiary's job duties in her proposed position. The director may issue a notice requesting any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

ORDER: The decision of the director dated September 30, 2010 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.