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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

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B4.

DATE: **MAR 19 2012** OFFICE: NEBRASKA SERVICE CENTER FILE:

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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a "solution company providing service rights of subscription of books, articles and journals and computer programs," and it seeks to employ the beneficiary as President. 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 petitioner failed to establish that the beneficiary's proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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 that will be addressed in this proceeding calls for an analysis of the beneficiary's job duties. Specifically, the AAO will examine the record to determine whether the petitioner submitted sufficient evidence to establish that the beneficiary would be employed in the United States in a qualifying 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) 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 examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). 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). USCIS reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the petitioner's business, the employment and remuneration of employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

A review of the record does not lead to an affirmative conclusion that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. With regard to the proposed position, the petitioner provided a list of job duties performed by the beneficiary with a percentage breakdown which included broadly stated job responsibilities. Due to the overly general information included in the percentage breakdown, the petitioner has failed to clarify how much time the beneficiary would spend performing qualifying tasks versus those that would be deemed non-qualifying.

The petitioner indicated that 5% of the beneficiary's time is spent on establishing "all internal operating and administrative procedures and policies, including creating internal departments and an organizational structure, establishing reporting and communication guidelines and preparing a budget." The petitioner also stated that the beneficiary will spend another 5% of her time to "establish all reporting and communications procedures between the Parent company and the Company." The beneficiary's position description is too general and broad to establish that the majority of her duties are managerial or executive in nature. 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 provide any detail or explanation of the beneficiary's activities in the course of her daily routine. 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 petitioner also stated that the beneficiary will spend 20% of her time to "research and develop new US vendors and evaluate marketability of the vendors in coordination with the [foreign company] in Seoul." The petitioner also states that the beneficiary will work with the marketing department that is located at the foreign company. In addition, the beneficiary will spend 5% of her time to "meet (or over the phone) outside researchers, writers and industry experts in the area of [the petitioner's] industry including medical industry and environmental industry to get an insight in industry trend." At the time of filing, the petitioner employed the beneficiary as president and one secretary and one marketing manager. In 2008, the marketing manager received an annual salary of \$16,000.00. It is not clear if this position was a full-time position. In addition, the petitioner stated that the marketing manager was in "charge of purchase and sales," and "processes invoices." Thus, it appears that the beneficiary is the only person in charge of finding new U.S. vendors and overseeing the market research for the company. Thus, the petitioner's description of the proposed duties suggest that the beneficiary's actual duties include a number of non-managerial and non-executive duties.

The petitioner also stated that the beneficiary will spend 40% of her time to "prepare, conduct and follow up on regular weekly meeting (via internet virtual meeting technology) with the following personnel [managing director and R & D director located at the foreign company and the petitioner's marketing director] regarding 1. Evaluation of existing products (journals, books and programs and research thesis) and new vendors 2. Sharing of information in industry trend 3. Other areas of common concern." 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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 job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive.

As discussed above, the petitioner has not identified employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business since the subordinates, the secretary and the marketing manager, are in charge of administrative and purchase and sales operations. The fact that the beneficiary has been given a managerial job title and general oversight authority over the business is insufficient to elevate her position to that of a

manager as contemplated by the governing statute and regulations. As discussed above, the petitioner has not established that the beneficiary's duties are primarily managerial in nature.

On appeal, the beneficiary submits a declaration. In the declaration the beneficiary states the following:

Part of my work is to meet or discuss over the phone outside researchers, writers and industry experts. This duty may be operational in that it may directly involve a particular transaction. However, I set up my work hierarchy so that discussion and meeting involving a particular transaction is to be handled by my staff whereas I focus on more of a directional topics so that these outside researchers, writers and industry experts can also focus for future dealings with [the petitioner.]

As noted above, at the time of filing, the petitioner employed the beneficiary as president and one secretary and one marketing manager. The petitioner submitted a job description of the secretary and marketing manager and the duties for these positions are not involved in dealing with the U.S. vendors and the marketing of new vendors. The petitioner's job description stated that 60% of her time is in the research and development of vendors and market research. As the beneficiary is the only individual responsible for these duties, the beneficiary does not have a subordinate staff to relieve the beneficiary from performing day-to-day operational duties. Thus, the petitioner has failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. Based on this finding, the petition cannot be approved.

Furthermore, the record does not support a finding of eligibility based on an additional ground that was not previously addressed in the director's decision. The record lacks a substantive job description establishing what job duties the beneficiary performed during her employment abroad with the foreign parent company. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). Based on this additional ground of ineligibility, this petition cannot be approved.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.