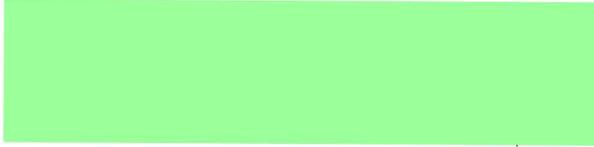


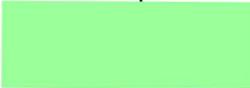


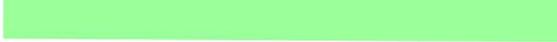
U.S. Citizenship
and Immigration
Services

(b)(6)



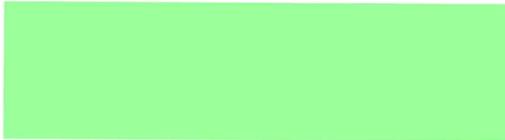
DATE: **MAR 09 2013** OFFICE: NEBRASKA SERVICE CENTER

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 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.

Ron Rosenberg
Acting 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 claims to be a Florida corporation that seeks to employ the beneficiary in the United States as its 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.

Among the documents that were submitted in support of the Form I-140 was a statement dated September 29, 2008 and signed by [REDACTED] in her capacity as the company administrator. [REDACTED] stated that the petitioner had four employees, including the beneficiary, and described the petitioner's business as one involving the import and export of office supplies, printers, and copier parts. The petitioner also provided additional evidence in the form of corporate and business documents.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for evidence (RFE) dated February 5, 2010 informing the petitioner of various evidentiary deficiencies. The RFE included requests for a more detailed job description pertaining to the beneficiary's proposed employment with a list of the beneficiary's job duties and their time allocations, the petitioner's organizational chart depicting the company's staffing structure and the beneficiary's placement therein, and job descriptions of the beneficiary's subordinates in each entity. The petitioner was asked to support its statements with documentary evidence. The director also cautioned the petitioner to refrain from paraphrasing the statutory language in place of the beneficiary's job description and instead to provide specific examples of duties the beneficiary would perform that meet the statutory definition of managerial or executive capacity.

The petitioner's response to the RFE included a statement dated March 15, 2010 and signed by the petitioner's sales manager. The statement included an overview of the beneficiary's U.S. employment and job descriptions pertaining to the sales manager and administrator positions. The petitioner also provided a copy of its organizational chart from March 18, 2009 depicting a total of five employees—the beneficiary, an administrator, a secretary, a sales manager, and a sales person—as well as the petitioner's 2009 tax return showing \$62,400 paid to the beneficiary in officer compensation and an additional \$67,152 paid in employee wages and salaries.

After considering the petitioner's response, the director determined that the petitioner failed to establish that the beneficiary would be employed with the U.S. entity in a qualifying managerial or executive capacity. The director found the beneficiary's job description to be lacking the detailed information that was requested in the RFE and further determined that a significant portion of the beneficiary's time would be allocated to tasks of a non-qualifying nature. In light of these adverse findings, the director issued a decision dated June 1, 2010 denying the petition.

On appeal, counsel provides a brief in which he disputes the director's findings by reiterating information that was previously provided with regard to the beneficiary's job description and the job descriptions of the beneficiary's subordinates. Counsel points to the beneficiary's discretionary authority, senior position within the petitioner's organizational hierarchy, and his oversight of managerial and supervisory subordinates.

The AAO finds that counsel's statements are not persuasive and thus fail to overcome the director's findings. A comprehensive discussion of the AAO's findings is provided below.

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.

As indicated above, the primary issue in this proceeding calls for an analysis of the beneficiary's proposed employment. The AAO will examine the petitioner's submissions in order to determine whether adequate supporting evidence was submitted 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 general, when examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. See 8 C.F.R. § 204.5(j)(5). A detailed description of actual daily job duties is crucial, as the 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 AAO will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees to relieve the beneficiary from having to primarily perform non-qualifying tasks, and any other facts contributing to a comprehensive understanding of a beneficiary's actual role in the business.

In the present matter, the AAO finds that the director accurately assessed the shortfalls of the job description that the petitioner offered in the response to the RFE. Not only does the petitioner only account for 80% of the beneficiary's time in the brief percentage breakdown that was included in the March 15, 2010 statement, but the job description is replete with vague statements that fail to identify the beneficiary's actual daily tasks while other portions of the description indicate that the beneficiary would allocate some of his time to certain non-qualifying tasks. To clarify these points, the AAO observes the petitioner's claim that 10% of the beneficiary's time would be allocated to establishing and overseeing the implementation of the petitioner's financial goals and policies and 15% would be allocated to coordinating administrative and sales activities. The petitioner did not list any specific tasks that would convey a meaningful understand of how the beneficiary coordinates administrative and sales activities or what he actually does to establish and implement policies regarding the petitioner's finances. This lack of specific information leaves open the possibility that

establishing and implementing financial goals and policies and coordinating sales and administrative activities may involve non-qualifying tasks in addition to the non-qualifying nature of developing new markets for the petitioner's products and negotiating with suppliers and sellers of such products.

While the AAO acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, the petitioner's organizational chart, which indicates that the petitioner employed five full-time employees at the time of filing, is inconsistent with the petitioner's Form I-140 and initial support statement, both of which indicate that the petitioner had only four employees at the time of filing. In light of the lack of clarifying information, it is unclear whether the petitioner's support staff at the time of filing was sufficient to relieve the beneficiary from having to allocate his time primarily to non-qualifying tasks.

Despite counsel's efforts to focus on the beneficiary's placement within the petitioner's organizational hierarchy and the discretionary authority that inevitably accompanies the beneficiary's leadership position, the job descriptions provided are simply insufficient to affirmatively establish that the beneficiary would allocate his time primarily to the performance of tasks within a qualifying managerial or executive capacity and on the basis of this conclusion the instant 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.