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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 0 4 2014 OFFICE: TEXAS 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, ("the director") denied the preference visa petition. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO) where the appeal was dismissed. The matter is now before the AAO on a motion to reopen and reconsider. Notwithstanding its decision to grant the petitioner's motion, the AAO will affirm its prior decision dismissing the appeal.

The U.S. petitioner is a corporation organized in the State of Florida in April 1999. On its Form I-140, Immigrant Petition for Alien Worker, the petitioner stated that it is engaged in the business of "sales of industrial equipment" and claimed a staff of six employees and a gross annual income of $262,117. It seeks to employ the beneficiary as its 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.

I. Procedural History

On August 17, 2012, the director denied the petition determining that the petitioner failed to establish: (1) that the petitioner's foreign parent company employed the beneficiary in a managerial or executive capacity; and (2) that it will employ the beneficiary in a managerial or executive capacity.

The petitioner subsequently filed an appeal, asserting that the director's basis for denial of the petition was erroneous and that the evidence of record is sufficient to satisfy the petitioner's burden of proof. With regard to the beneficiary's employment abroad, counsel reviewed the components of the beneficiary's employment abroad, stating that the beneficiary represented the company internationally for 25% of his time, directed shareholder meetings for 15% of his time, approved general manager's decisions for 23% of his time, suggested which actions the "directive members" should take in running the organization for 25% of the time, and executed plans according to statutes and company rules for the remaining 18% of the time. Counsel also provided two powers of attorney showing that the beneficiary was appointed to represent two different U.S. entities before authorities in Venezuela in 1999 and 2000, untranslated versions of the foreign entity's payroll from 2006 through 2009, and documents of education credentials pertaining to several of the foreign entity's employees. The AAO found the petitioner's submissions to be irrelevant and lacking in probative value, as they did not constitute evidence of the beneficiary's actual job duties while working in Venezuela for the foreign entity.

After considering the evidence and information submitted on appeal, the AAO determined that the evidence lacked probative value. The AAO noted that the petitioner made inconsistent references to the beneficiary's position title, referring to him at times as general manager and at other times as president with each position having its own set of job duties and distinct placement within the foreign entity's organizational hierarchy.

Next, with regard to the beneficiary's employment with the petitioning entity, the petitioner provided an additional breakdown of the beneficiary's daily. Additionally, counsel claimed that the beneficiary has been performing in both a managerial and executive capacity since 2010 and would continue to do so in his proposed position. Counsel objected to the director's focus on the petitioner's staffing size, asserting that the director overlooked the beneficiary's responsibility for directing the petitioner

through independent contractors. Counsel noted that the petitioner employs customs brokers and freight forwarding services, which are under the beneficiary's direction, thus relieving him of performing these duties. Counsel also asserted that the beneficiary is performing an essential and controlling function with respect to a large and complex business enterprise, which requires significant decision making and that the beneficiary formulates and executes the petitioner's policies. Finally, counsel pointed out that the beneficiary's L-1 visa classification was approved and that the beneficiary is working in a managerial or executive position with the same international organization.

Here too the AAO determined that the petitioner failed to meet its burden of proof. First, the AAO observed that while the beneficiary is listed as head of the petitioning organization, the petitioner did not provide evidence to establish that the beneficiary has a subordinate level of managerial employees to oversee or direct. The AAO also observed that the job description the petitioner provided was overly vague and thus failed to establish that the beneficiary's primary focus is on the goals and policies of the organization. Next, with regard to claims that the petitioner hired outside contractors, including freight forwarders, a storage facility, and an accountant, the AAO determined that the petitioner failed to provide evidence to substantiate its claim. The AAO concluded that at most the beneficiary is acting as a first-line supervisor of non-professional, non-supervisory, and non-managerial employees. In assessing the petitioner's reference to beneficiary as a function manager, the AAO determined that the petitioner did not articulate any specific function that the beneficiary will manage or identify any employees who perform the everyday routine operational tasks, including the duties of a first-line supervisor, thus relieving the beneficiary to primarily perform managerial duties. The AAO also agreed with the director's consideration of the petitioner's personnel size as one factor in determining the beneficiary's managerial or executive capacity. Lastly, with regard to the previously approved L-1A nonimmigrant petition filed on the beneficiary's behalf, the AAO pointed out that in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO found that in the present matter, the director's determination was based on a properly conducted review of the record of proceeding and that despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

II. The Law

To establish eligibility for the employment-based immigrant visa classification, the petitioner must meet the criteria outlined in section 203(b) of the Act. 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.

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 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.

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--
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> (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;
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> (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--
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> (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.

III. Analysis

On current motion, counsel states that "the Texas Service Center issued denials of [the] applicant's [F]orm I-290B" and asserts that the AAO failed to properly evaluate the petitioner's appeal.[1] In his supporting statement dated August 27, 2013, counsel contends that the AAO overlooked the petitioner's 2011 gross profits and asks the AAO to consider the petitioner's increased gross profits for 2012 as shown in the petitioner's 2012 corporate tax return, which the petitioner provides in support of the motion. Counsel also refers to the petitioner's submission of an October 10, 2012 letter from as evidence that the petitioner hired outside contractors for accounting services, claiming that this evidence contradicts the AAO's finding that the petitioner did not provide evidence to establish its use of outside contractors.

Additionally, the petitioner provides the following documents in support of its motion:

1. A translated certification letter, dated July 26, 2013, from "the board of administration" of the Venezuela entity, stating that the beneficiary had the dual role of president and general manager during his employment abroad. The letter indicates that the beneficiary, in his dual role, had the power to name and designate the director or manager as well as "technicians and other professionals" as deemed qualified by the beneficiary.
2. The foreign language version of the above certification.
3. The petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, for the year 2012.
4. A freight and forward services agreement dated April 11, 2009 naming the petitioner and as parties to the agreement.
5. The beneficiary's foreign payroll receipts with certified English language translations accounting for payments in September-November 2006; January, October, and December 2007; January – March and November – December 2008; and January, February, and June 2009.

The AAO finds that the documents submitted in support of the motion lack sufficient probative value and thus fail to overcome the adverse findings previously issued in the AAO's prior decision dated July 29, 2013.

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[1] It is noted that the decision dated July 29, 2013 was issued by the AAO, not by the Texas Service Center. Although the director of the Texas Service Center issued the decision, which prompted the appeal, the director did not issue the appellate decision that is now under consideration on motion.

First, starting with the certification letter and its translation, the regulation at 8 C.F.R. § 103.2(b)(3), expressly states that the English language translation of a foreign document must be certified by the translator for completeness and accuracy and must include "the translator's certification that he or she is competent to translate from the foreign language into English." In the present matter, the petitioner did not provide any evidence identifying who the translator is or his or her competence to provide a complete and accurate translation. Therefore, given the petitioner's failure to submit *certified* translations of the foreign certification letter, the petitioner failed to establish that the individual who translated the foreign certification letter meets the regulatory requirements and thus failed to establish that the evidence submitted supports the petitioner's claims.

Next, turning to the petitioner's tax return and evidence of the beneficiary's employment abroad, the AAO questions the relevance of these documents, neither of which addresses key elements, such as the beneficiary's job duties with either entity, the organizational hierarchy of either entity, and either entity's ability to relieve the beneficiary from having to focus his time primarily on the performance of non-qualifying operational tasks of the foreign or U.S. employer.

Lastly, with regard to the petitioner's submission of a freight forwarding service agreement, this document predates the filing of the instant petition by over two years and does not specify the exact duration of the contract. Although the second clause of the contract indicates that the term of the agreement will remain in effect indefinitely, the petitioner provided no evidence, such as receipts of having paid for the freight forwarding services, to establish that the agreement was still in effect on December 12, 2011 when the Form I-140 was filed.

IV. Conclusion

In light of the above, the petitioner has failed to provide sufficient probative evidence to resolve the deficiencies and inconsistencies that were previously noted in the AAO's earlier decision. The evidence submitted on motion fails to establish the specific job duties the beneficiary performed abroad and would perform in the United States, thus precluding the AAO from being able to conclude that the beneficiary's former employment with the foreign entity and his proposed employment with the petitioning entity fit the statutory criteria of managerial or executive capacity.

Accordingly, the AAO will affirm its prior decision to dismiss the appeal based on the two grounds stated in the original decision, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted. The underlying petition is denied.