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

**BA**

FILE:

SRC 05 194 50776

Office: TEXAS SERVICE CENTER

Date: **DEC 06 2006**

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:

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, 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 appeal will be dismissed.

The petitioner is a Texas corporation operating as a telecommunication service provider. It seeks to employ the beneficiary as its president.<sup>1</sup> 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 based on two independent grounds of ineligibility: 1) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 2) the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, counsel disputes the director's conclusions and submits a brief in support of her arguments.

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 two primary issues in this proceeding call for an analysis of the beneficiary's employment capacity. The first issue is whether the beneficiary was employed abroad in a primarily managerial or executive capacity,

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<sup>1</sup> It should be noted that, according to the Texas Comptroller of Public Accounts, the petitioner is not currently in good standing in Texas due to its failure to satisfy all state tax requirements. Therefore, regardless of whether the petitioner's tax issues in Texas can be easily remedied or not, it raises the critical issue of the company's continued existence as a legal entity in the United States.

and the second issue is whether the petitioner established that it would employ the beneficiary in a primarily 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 support of the petition, the petitioner provided the following breakdown of the beneficiary's proposed areas of responsibility:

- 40% Administration and [b]usiness [m]anaging

- 20% Supervising [s]ubordinates
- 20% Public [r]elationship
- 10% Training
- 10% Trade [s]hows and [c]onferences

The petitioner provided an organizational chart illustrating its hierarchical structure. It shows that the beneficiary would oversee the work of a certified public accountant (CPA) and the petitioner's general manager. The general manager is shown as having three subordinate employees, including a plumber, a sales associate, and an installer. Although the chart projects having two additional sales positions to be supervised by the sales associate, neither position was filled at the time the Form I-140 was filed.

The record shows that the petitioner did not provide initial supporting evidence in regard to the beneficiary's duties or responsibilities during his employment abroad.

On October 4, 2005, the director issued a request for additional evidence (RFE) instructing the petitioner to provide the following documentation to assist in determining the beneficiary's employment capacity abroad and in the proposed position in the United States: 1) detailed descriptions of the beneficiary's positions, including the goal-setting, policy-making, and decision-making duties; 2) a detailed account of how each of the respective entities' organizational hierarchies allowed and would allow the beneficiary to primarily function as a manager and/or executive; and 3) the job titles and job duties of the beneficiary's subordinates both abroad and in the United States.

In response, the beneficiary provided the following statements discussing his role as policy- and decision-maker within the petitioning organization:

As the [p]resident of [the petitioner], [the beneficiary has] full discretionary power of goal setting, policy making, and decision making. [The beneficiary] directed [the petitioner] in the competitive [c]ellular industry to successful operation in the greater Houston area. [He] strategically selected a geographic location for the business where [he] made the executive decision to sublease the office space required for operation. . . .

With a location and a business to direct, [the beneficiary] switched [his] focus to policy making. Although [he] directly supervise[s] two employees it is [his] vision and leadership that constitute the majority of [his] functions as president of [the petitioner]. [The beneficiary is] responsible for creating effective policy solutions to constantly increasing costs in the cellular industry. These policy solutions must also address possible expense reductions in the delivering and servicing of [the petitioner]'s products.

[His] most recent decision involved a new distribution association agreement between [the petitioner] and Baratel . . . , a company specializing in the distribution of pre paid long distance telephone cards. [The beneficiary] recognized the potential of the association as an expansion of [the petitioner]'s services in the telephony industry. . . .

The new association has called for new marketing strategies. . . . [The petitioner] and Baratel are distributing long distance phone cards with characteristics specifically designed to appeal to the Hispanic population. These characteristics include low rates, appealing to all consumers, and graphic designs picturing the Virgin Mary. . . . This marketing theme was the product of [the beneficiary's] business plan to reach the Hispanic community quickly and effectively. . . . [The petitioner]'s other business ventures also flourished under [the beneficiary's] leadership. The sale and distribution of Concession Food trailers has proved to be a profitable investment. Since late 2003, [the petitioner] has established itself as a powerful distributor. However, the recent rise in oil prices brought hardship due to lack of demand . . . . With [the beneficiary's] policy making, [the petitioner]'s trailer sale and distribution business was able to overcome these hostile market conditions.

The beneficiary discussed his supervisory responsibilities, which include overseeing the work of the general manager and a CPA.

With regard to the beneficiary's role within the foreign organization, the beneficiary stated that he was the company's chief executive officer (CEO) from January 1992 to May 2003. He stated that his role was that of goal setter and general policy maker of the organization whose main business objective was to expand the promotion and distribution of local and imported telecommunication products in Mexico. The beneficiary stated that he developed consulting support to complement the services provided by the foreign entity. The petitioner also submitted the foreign entity's organizational chart, which shows the beneficiary at the top of the hierarchy. His immediate subordinates include a logistics manager and a sales manager, each of whom is shown to have a staff of subordinates.

On February 16, 2006, the director denied the petition noting that the breakdown of duties indicates that the beneficiary would be primarily involved in business marketing, staff recruitment and supervision. With regard to the beneficiary's foreign employment, the director stated that the beneficiary's duties were "composed primarily of the daily productive tasks." Overall, the director concluded that neither of the beneficiary's job positions involved primarily qualifying duties. While the AAO concurs with the director's ultimate finding regarding the petitioner's eligibility, the record does not support the underlying observations and analysis. Namely, the director's statements indicate that the petitioner provided sufficient information regarding the beneficiary's specific duties, thus enabling a determination as to the types of duties performed and whether such duties have been and would be within a qualifying capacity.

However, the descriptions provided by the petitioner, both initially in support of the Form I-140 and in response to the RFE, lack the degree of specificity that is necessary in order to draw any conclusions as to the beneficiary's actual duties. All of the beneficiary's descriptions of his prior and proposed positions indicate that he has had final discretionary authority over each company's business objectives. The beneficiary also provided examples of the types of decisions he has made and expects to make in the future. However, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Accordingly, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* at 1108.

In the instant matter, the record lacks statements describing what actual duties the beneficiary has performed and would perform on a day-to-day basis. In other words, the record does not identify the actual tasks the beneficiary would carry out in managing the petitioning organization or supervising his subordinates, which would cumulatively consume 40% of the beneficiary's time. The petitioner also failed to explain what "public relationship" exactly is or the duties associated with this ambiguous responsibility, which would consume another 20% of the beneficiary's time. Although the petitioner attempted to supplement the record with a discussion of the various decisions the beneficiary has made in an effort to ensure the petitioner's financial advancement, the record does not contain an account of the actual duties the beneficiary would perform on a daily basis.

Similarly, with respect to the beneficiary's employment abroad, the information provided fails to specifically name any of the duties actually performed by the beneficiary in his attempt to carry out his executive role. While the record illustrates an organizational hierarchy and staffing levels that had the potential to sustain a primarily managerial or executive position, the AAO cannot draw any conclusions regarding the beneficiary's employment capacity abroad without an account of the specific duties performed. *See id.*; *see also* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C).

On appeal, counsel attempts to expand on the previously provided information, stating that 40% of the beneficiary's time would be spent negotiating with business owners, making deals, and setting business plans. However, this broad list of responsibilities fails to disclose the beneficiary's specific daily activity. Without specifics, the AAO cannot conclude that negotiating and making deals necessarily involve duties of an executive nature. The record does not clarify what actual duties are entailed in such negotiations or even who the beneficiary would negotiate with on a regular basis. Although counsel also states that the beneficiary would spend another 20% of his time supervising one professional and one managerial employee, the record is unclear as to the actual means by which the beneficiary would accomplish the personnel management portion of his job. Thus, at least 60% of the beneficiary's time would be spent performing tasks that are undefined in the instant record.

With regard to the beneficiary's foreign employment, counsel states that the beneficiary's executive role involved traveling and brokering deals. However, none of counsel's statements provide a detailed account of the duties performed during the beneficiary's employment abroad. Despite the likelihood that the beneficiary played a crucial role in the foreign entity's business development, the AAO cannot conclude that the beneficiary was employed in a qualifying capacity based on the inconclusive information provided.

Accordingly, this petition cannot be approved based on the lack of crucial information regarding the beneficiary's job duties abroad and his proposed job duties in the United States.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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.