



U.S. Citizenship
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FILE: [redacted] Office: TEXAS SERVICE CENTER
SRC 07 277 58024

Date: APR 06 2009

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a commercial airline with headquarters in Korea, seeks to employ the beneficiary in the position of Deputy General Manager, Regional Passenger Traffic Office, based at JFK International Airport in New York.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed by petitioner abroad in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts the beneficiary was employed by the petitioner's foreign operations in a primarily managerial capacity. Counsel contends that the director's decision to the contrary was "based on a selective and partial application" of the statutory definition of "managerial 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 the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and 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 that 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. *See* 8 C.F.R. § 204.5(j)(5).

The sole issue addressed by the director is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial capacity. The petitioner does not claim that the beneficiary was employed in an 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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.

The petitioner filed the immigrant visa petition on July 30, 2007. In a letter dated July 19, 2007, the petitioner stated that the beneficiary held the position of Manager, Check-in Counter and Administration for the airline at Incheon International Airport in Korea from April 2002 until September 2006, at which time he was transferred to the United States in E-1 nonimmigrant status.

In support of the petition, the petitioner submitted an organizational chart which identified the beneficiary as "head manager" of "2 Group" within the airline's "check-in team" at Incheon International Airport. The chart indicates that the beneficiary reported to the station manager, but it did not list any subordinate staff.

The director issued a request for additional evidence (RFE) on April 16, 2008, in which he advised the petitioner as follows:

You have not provided a list of duties in the former position abroad. Please provide a thorough list of duties/tasks that describe the position. . . . Please describe the duties in much

greater detail. . . . Please include what actual, specific day-to-day tasks [were] involved with the completion of each duty. Supplement these descriptions with an estimate of the percentage of time the beneficiary formerly dedicated . . . to each specific duty.

Please provide a detailed organizational chart for the beneficiary's former employer abroad that corresponds with the beneficiary's qualifying employment abroad. Include the names of all departments and teams. Include the names and a detailed description of the job duties for the beneficiary's immediate supervisor and subordinate employees.

In a response dated May 14, 2008, counsel for the petitioner provided the following additional information regarding the beneficiary's position with the foreign entity.

The beneficiary's last position abroad was "Manager, Check-in Counter and Administration" at the Incheon airport. The responsibility for the check-in counters are divided into three shifts. The General Manager, as the chief handles one shift. The beneficiary along with the other assistant manager handles the other two shifts. As manager, beneficiary was in charge of the entire check-in service for about 5,000 passengers that depart during the duty hours.

The specific duties of the position are as follows:

- Responsible for the operations of the check-in service, including manpower, job assignments, telex or document processing for first class, prestige, economy, high mileage (skypass elite members), group, and domestic counters.
- Reports to the station manager and head office on the latest development and changes in departure levels at each airline, security, and any response on request by the head office.
- Pre-monitors advance flights for special issues, booking status, and flight information – including weather and special passengers and baggage with after-flight works.
- Authorizes schedule adjustments, job progress, overtimes, etc.
- Meets with contracted companies regarding tagging for group baggage, security, and port authority and other airlines who have code-share agreements with [the petitioner].
- Handles customer complaints, compliments and suggestions.
- Evaluates and monitors training status of employees.
- Coordinates with other departments especially with the Arrival/Departure team, baggage handling team, and operation team.
- Handles flight irregularities caused by maintenance, weather, etc.

Counsel indicated that the beneficiary's supervisor was the general manager, check-in, who performed the same duties as the beneficiary during a different shift. With respect to the beneficiary's subordinates, counsel stated:

The beneficiary's subordinate employees at the Incheon airport were the check-in agents. The agents have similar duties of providing check-in service to passengers such as handling

first/prestige/economy, high mileage, group and domestic counters, etc., message kiosks, documents handling.

The director denied the petition on June 6, 2008, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity. In denying the petition, the director determined that, based on the evidence submitted, the beneficiary was primarily a supervisor of check-in agents. The director noted that the petitioner had not established that the beneficiary managed a subordinate staff of managerial, professional or supervisory personnel, or that he had the authority to hire or fire personnel. The director further observed that, although requested, the petitioner failed to assign percentages to the various duties and tasks the beneficiary performed in his role with the foreign entity.

On appeal, counsel for the petitioner asserts that the director's conclusion "was based on a selective and partial application" of the statutory definition of "managerial capacity." Counsel contends that there is no dispute that the beneficiary's position meets the criteria at sections 101(a)(44)(A)(i) and (iv) of the Act. Counsel claims that although the beneficiary did not have the authority to hire and fire personnel, he did in fact have the authority for personnel actions, such as responsibility for evaluations, schedule adjustments, job assignments, and overtime requests. Furthermore, counsel states that the director failed to consider whether the beneficiary managed an essential function of the foreign entity. In this regard, counsel states:

The beneficiary's position abroad indisputably managed an essential function within the organization – check-in and administration. His duties were the same as the General Manager and he was responsible for over 5,000 passengers during his shift. The check-in service includes . . . : ticketing and booking, basic check-in, baggage check-in, seat assignment, skypass, editing, codesharing with other airlines, family services, special meals, no fly/selectee, among others. This is an essential function of an airline company. Without the check-in services, the company will not function. A mismanaged check-in services department will likewise cause the downfall of an airline company.

Counsel asserts that "as the beneficiary's former position abroad managed an essential function of the organization, the position must be considered as having satisfied the second prong of the definition of a managerial position."

Finally, counsel states that the beneficiary did in fact supervise professional employees. Counsel asserts that "the training needed to qualify as a [check-in] agent requires knowledge of an advanced type of specialized instruction and study of at least a baccalaureate level. Counsel further asserts that agents "are required to pass a specialized instruction and study program to be qualified."

In support of the appeal, the petitioner attaches a chart labeled "The Subordinate Staffs – Korea" which lists 90 individuals by name, title, hire date, degree, and major. The petitioner does not identify which employees are claimed to have worked under the beneficiary's supervision during his employment with the petitioner in Korea. In addition, many employees on the list were hired subsequent to September 2006. The AAO notes that most, but not all, of the employees identified as "agent" have bachelor's degrees, while some attended "technical school."

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial capacity.

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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Here, the petitioner's description of the beneficiary's duties fails to establish that he performed primarily managerial duties while employed by the foreign entity. For example, the petitioner indicated that the beneficiary is "responsible for the operations of the check-in service, including manpower, job assignments, telex, or documentation processing for first class, prestige, economy, high mileage, group and domestic counters." Generalities such as "responsible for" do not clearly indicate whether the beneficiary strictly managed these activities, or whether he was personally involved in routine document processing and check-in activities alongside check-in agents. 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 AAO notes that counsel later stated that beneficiary's subordinate check-in agents "have similar duties of providing check-in service to passengers" including handling various check-in counters and "document handling." Based on this statement, it is reasonable to conclude that the beneficiary's duties include actually providing check-in services to customers, and not solely supervising the check-in agents' performance of such duties. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The beneficiary's responsibilities for reporting check-in developments and departure levels to management, pre-monitoring advance flights, and handling customer complaints, comments and suggestions also have not been shown to rise to the level of managerial capacity. These are service-related duties that do not appear to require the exercise of discretion required by section 101(a)(44)(A)(iv) of the Act. Many of the beneficiary's remaining duties involve "coordinating" with other airline departments and with contracted companies, but the petitioner has not adequately explained for what purpose the beneficiary coordinates with others, what level of managerial authority or discretion is involved, or otherwise adequately explained how these duties fall under the statutory definition. 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).

Moreover, based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v.*

INS, 923 F.2d 175, 177 (D.C. Cir. 1991). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as discussed above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager. *See e.g., IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Section 101(a)(44)(A)(iii) of the Act.

Counsel claims on appeal that the beneficiary was responsible for supervising professional personnel during his employment with the petitioner in Korea, and that he had the requisite authority to recommend personnel actions. According to the record, all of the beneficiary's subordinates held the position of "check in agent." The petitioner does not claim that the beneficiary's subordinates included any managers or supervisors.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree in a specialized field is actually necessary to perform the duties of an airline check-in agent. Based on the evidence submitted on appeal, the petitioning company has a preference for hiring individuals who have completed a bachelor's degree. However, the degrees listed include foreign languages, sciences, arts, business administration and many others. Furthermore, the petitioner clearly hires some persons as agents who have not completed a bachelor's degree program. The petitioner has not established that the beneficiary supervised

professional employees during his employment with the foreign entity, and therefore, the petitioner does not qualify for the benefit sought as a "personnel manager."

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. As stated above, 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Counsel states for the first time on appeal that the beneficiary managed the essential function of "check-in and administration," for the foreign entity. While the AAO does not doubt that the beneficiary held a key position as a manager in the check-in department, the petitioner has not failed to clearly describe the duties the beneficiary performed in managing the claimed function, nor has it established the proportion of the beneficiary's time devoted to managerial duties. As discussed above, the limited information in the record suggests that the beneficiary was directly involved in providing check-in services to airline passengers. Since the petitioner has not established that the beneficiary's duties were primarily managerial in nature, it cannot be concluded that he managed an essential function for the foreign entity. Moreover, the petitioner has not established that the beneficiary exercised the required level of discretionary authority over the claimed function.

Based on the foregoing discussion, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the AAO finds that the petitioner also failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. In the notice of decision, the director stated that "the proposed position US position generally fits the criteria of a manager except for the personnel prong in Title 8, Code of Federal Regulations, Part 204.5(j)(2)(C)."

The proffered position is that of Deputy General Manager of the Regional Passenger Traffic Office at JFK International Airport, which is described briefly as "assisting the manager of the regional passenger traffic office." The petitioner indicates that the beneficiary will spend 50% of his time performing "passenger service during flight operational hours in the areas of protocol, check-in counters, gate, baggage area, ramp, etc." If the beneficiary is directly providing "passenger service" and devoting half of his time to these activities, it cannot be concluded that he will be performing primarily managerial duties. His remaining duties

include many of the duties listed in his foreign position description, several of which are not clearly managerial in nature. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, the petitioner has not clearly described the beneficiary's supervisory authority over subordinate professionals, managers or supervisors, or his management of an essential function of the U.S. organization. The petitioner provided a chart labeled "job analysis" listing 22 employees by first name, along with their abbreviated job functions, which include "PSM Administration," "I/A Debit," "Catering," "Lounge," "OAL," "Admin," "In-bnd h/d," "Facility," etc. The petitioner stated that the employees on the list are the beneficiary's subordinates. However, it is not evident from this limited information that the listed employees would relieve the beneficiary from providing services to passengers or performing other non-managerial duties associated with his areas of responsibility. The petitioner did not provide the requested detailed information regarding the beneficiary's subordinate staff. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evidence submitted is insufficient to establish that the beneficiary will perform primarily managerial or executive duties. For this additional reason, the petition cannot be approved.

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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows 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).

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.