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U. S. Citizenship and Immigration Services
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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: JUL 23 2009
LIN 07 186 51109

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 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 limited liability company organized in the State of Florida. It seeks to employ the beneficiary as its director of operations. 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 three independent grounds of ineligibility: 1) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; 2) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity; and 3) the petitioner failed to establish that it has the ability to remunerate the beneficiary's proffered wage.

On appeal, counsel disputes the director's conclusions and submits a brief and additional documentation in support of her arguments. After reviewing the petitioner's submissions, the AAO concludes that the petitioner has submitted sufficient evidence to overcome the third ground for denial as cited above. As such, the AAO will limit its discussion to the two remaining grounds.

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 key issues in this proceeding call for an analysis of the beneficiary's job duties. Specifically, the AAO will examine the record to determine whether the beneficiary was employed abroad and whether he 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 support of the Form I-140, the petitioner submitted a letter dated May 25, 2007, which includes the following description of the beneficiary's proposed employment:

[The beneficiary] has control overall [sic] the employees as they directly reporting [sic] to him; as well as our companies [sic] activities. In the area of human resources management, [the beneficiary] exercise authority in regard to hiring, firing, training, delegation of assignments according to capabilities, preferences and technical goals, disciplines, promotions, and remuneration. He conducts performances [sic] reviews and ensures that his staff followed [sic] corporate procedures.

Functioning autonomous [sic], [the beneficiary] is responsible for managing and directing all development activities of [the petitioner] as they pertain to our international operations. . . . [The beneficiary] routinely meets with various specialists from the international units and with managing directors to ensure that our corporate philosophy is understood and is being delivered accurately. He represents the unique concerns and requirements of the international operations to headquarters and provides significant contributions in the formulation of strategic product plans to ensure that the business and strategic policies are effectively incorporated into our international business activities.

[The beneficiary] also establishes and promotes the standardization of technical support and service based upon our corporate model. He meets regularly with various development units to review current policies and procedures and develop[s] appropriate plans necessary to ensure consistency of [the] development practice in accordance with corporate standards. [The beneficiary] enhances the level of direct development expertise available. He formulates strategies and plans to improve the communications between the U.S. corporations and the foreign company. In sum, [the beneficiary] has autonomous control over, and exercise[s] wide latitude and discretionary decision-making in, establishing the most advantageous course of action for the success [sic] management and direction of our international development activities.

With regard to the beneficiary's employment with the foreign entity, the petitioner merely stated that the beneficiary held an executive position as an export area manager from 1993 to 2005. The petitioner did not, however, provide the beneficiary's job description. The AAO further notes that, while the petitioner provided numerous organizational charts in support of the petition, a majority of the charts were in a foreign language and unaccompanied by certified English language translations. *See* 8 C.F.R. § 103.2(b)(3). As such, the untranslated documents have no probative value in helping to establish the beneficiary's managerial or executive capacity either abroad or with the petitioning entity.

On June 11, 2008, the director issued a request for additional evidence (RFE) instructing the petitioner to provide a detailed description of the beneficiary's specific daily tasks both for his

employment abroad and for his proposed employment with the U.S. entity. The petitioner was asked to assign the percentage of time allotted to each listed job duty. The petitioner was also instructed to provide detailed organizational charts for the foreign and petitioning entities, naming all departments and showing the beneficiary's position as well as his supervisors and subordinates in order to illustrate the beneficiary's position with respect to others within each organization.

In response, the petitioner provided the following description of the beneficiary's position abroad:

In charged [sic] with a high level of functional management responsibility for the direct development of the company. [the beneficiary] planned, directed, and coordinated the operations of the company. Additionally, [he] formulated policies, managed daily operations, and planned the use of materials and human resources. Furthermore, he supervised personnel, purchasing, and administrative services. He directed and coordinated activities of the company and management departments concerned with the production, pricing, sales, and distribution. He reviewed financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement. 35%

[The beneficiary] established and implemented departmental policies, goals, objectives and procedures, conferring with our partners and staff members as necessary. He determined staffing requirements, and interviewed, hired and trained new employees, and managed those personnel processes. Moreover, he monitored businesses and agencies to ensure that they efficiently and effectively provide needed services while staying within budgetary limits; and coordinated activities related to making products and providing services. [The beneficiary] directed and coordinated the company's financial and budget activities to fund operations, maximize investments, and increase efficiency. [The beneficiary] performed an executive function for our corporation since he exercised wide latitude with regard to discretionary decision-making and receives minimal supervision and direction from our board of directors. In addition, he planned[,] formulated and implemented administrative and operational policies and procedures as they pertain[ed] to the corporation. 25%

Placed the goals and objectives of the companies [sic], created a comprehensive authority delegation matrix to better empower management activities, approved the vision and mission of the company, approved the commercial offering and objectives of the company, and supervised all operational results in conjunction with the company. [The beneficiary] continuously exercised managerial authority and control over the successful operations of the foreign company and that staff under his supervision was indeed mainly composed of managers and professionals In addition, [the beneficiary] was responsible for the overall decision making of the company's activities and reported directly to the board of directors 20%

[The beneficiary] was involved in the day-to-day operations, where he managed the development of the production of water pumps for domestic and industrial

applications equipments in the country, distribution, and parts required for the operation of the company, administer and supervised directly the markets assigned and was responsible for the proper operation and their correct performance throughout the parent company, credit negotiations, bank transactions and human resources management. [The beneficiary] accomplished increased revenues. He also managed and delegated responsibilities to group managers who in turn directed teams In managing his professional team, [the beneficiary] has authority to recruit, hire, train, promote and terminate his staff. He also executive business policies pertaining to product planning activities and standards applied and services which were consistent with Pedrollo, S.p.A.'s requirements operations. . . . 20%

The above description of job duties was accompanied by the foreign entity's organizational chart, showing the company's president at the top of the hierarchy, followed by an audit department director, who is shown as overseeing the director of sales to branches. The beneficiary is shown as a subordinate of the director of sales by virtue of heading the branch entitled U.S.A. The chart does not list subordinates for the beneficiary, nor does it show any staffing levels subordinate to any of the sales branches.

With regard to the beneficiary's proposed employment the petitioner provides a supplemental job description. The AAO notes that the petitioner repeated the entire description initially offered in support of the petition. The petitioner assigned 60% of the beneficiary's time to the duties and responsibilities discussed in the first two paragraphs and another 20% of the beneficiary's time to the duties and responsibilities discussed in the third paragraph of the original job description. The petitioner provided the following additional statements to account for the remaining 20% of the beneficiary's time in his proposed position:

Has autonomous control over, and exercise[s] wide latitude and discretionary decision-making in, [sic] establishing the most advantageous course of action for the successful management and direction of our development activities. [The beneficiary] has had a key role in the implementation plans, and his continuing presence is essential to bring the new and implemented goals to a successful conclusion. . . .

The petitioner also provided an organizational chart illustrating a staffing hierarchy that is headed by the beneficiary, who assumes the position of director of operations. The next personnel level includes the beneficiary's assistant and the general manager, who appears to be the beneficiary's direct subordinate with four subordinate positions of his own—a business development specialist and administrative manager, an advertising position shown as "to be hired," and a logistics manager. The business development specialist oversees a sales manager, who is shown as overseeing three sales people. The administrative manager is also shown as having her own assistant. The two remaining subordinates of the general manager are not shown as having any subordinates or assistants. Thus, the total number of employees named in the organizational chart is seven, not including one advertising position, which was obviously vacant at the time the chart was completed, and the administrative manager's assistant and three sales people, none of whom were specifically named in the organizational chart.

Additionally, the petitioner provided a copy of its quarterly wage report for the quarter during which the Form I-140 was filed. The form listed a total of six employees, including the beneficiary. Of the six employees, only three were named in the petitioner's organizational chart.

After reviewing the submitted documents, the director issued a decision dated July 28, 2008 denying the petition. The denial was based, in part, on the determination that the petitioner failed to establish that the beneficiary was employed abroad or that he would be employed in the United States in a qualifying managerial or executive capacity. While the director was correct in his overall findings on both grounds, the AAO notes that the director's comments implying that professional employees must be compensated with salaries commensurate with their respective employment capacities were erroneous and will have no bearing in the AAO's ultimate findings in this matter.

Notwithstanding the director's irrelevant observation regarding employee salaries, the record supports the director's overall conclusions. That being said, 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 AAO will then consider this information in light of the petitioner's organizational hierarchy, the beneficiary's position therein, and the petitioner's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks.

In the present matter, the petitioner has failed to provide an adequate job description, despite the director's express request for this much needed information, and it has provided an organizational chart and quarterly wage report, which casts serious doubt on the likelihood that the petitioner would be able to employ the beneficiary in a qualifying managerial or executive capacity.

First, with regard to the petitioner's description of the beneficiary's proposed employment, the director was clear in requesting a much more detailed job description, enumerating specific job duties with the percentage of time ascribed to each job duty. Here, the supplemental job description submitted in response to the RFE consisted primarily of restated portions of the job description that was previously provided and which was clearly found to be insufficient, as indicated by the issuance of the RFE. Rather than complying with the request for specific day-to-day job duties, the petitioner restated broad business objectives and general job responsibilities that fall far short of establishing the specific means by which those objectives and responsibilities would be met by the beneficiary on a daily basis. For example, when asked for an enumeration of specific tasks, the petitioner provided no clarity as to how exercising control over employees and maintaining responsibility over the management and direction of all development activities translate into day-to-day job duties. The petitioner also stated that the beneficiary "meets regularly with various development units to review current policies and procedures and [to] develop plans" accordingly. However, no explanation is provided as to which employees represent the "development units," nor is there any indication as to the frequency of these meetings or what type of information is gained from these meetings that allows the beneficiary to make further development plans. In other words, the petitioner circumvented the director's request for a list of specific tasks, thereby making it virtually impossible for the AAO to establish how the beneficiary spends his time and whether the primary portion of his time is allotted to tasks of a qualifying nature.

Second, with regard to the petitioner's organizational hierarchy, the petitioner has provided an organizational chart that is not corroborated by the evidence that has been submitted. As stated

above, while the petitioner's quarterly wage report for the relevant tax quarter corroborates the petitioner's claim of employing six people at the time of filing, only four of the individuals named in the report were also named in the organizational chart. That being said, three of the individuals that were named in the organizational chart, i.e, the beneficiary's assistant, the logistics manager, and the sales manager, were not found in the list of employees that was included in the relevant quarterly wage report. Additionally, while the petitioner's organizational chart indicated that it had three sales people at the time of filing, no evidence was submitted to corroborate this claim. 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)). Without the proper corroborating evidence, the AAO is unable to get a clear illustration of the actual organizational hierarchy at the time of filing so as to gain a meaningful understanding of the positions that were filled and how those positions may have assisted in relieving the beneficiary from having to primarily focus on the daily performance of non-qualifying tasks.

With regard to the beneficiary's employment with the foreign entity, the job description offered in response to the RFE is equally as deficient in details about the beneficiary's day-to-day tasks as the description of the beneficiary's proffered position. For instance, the petitioner stated that 35% of the beneficiary's time abroad was allotted to planning, directing, and coordinating company operations; supervising personnel, purchasing, and administrative services; directing and coordinating company activities and the company's management departments; and reviewing financial statements and sales and activity reports. First, the list of activities cited herein is primarily comprised of general job responsibilities and broad business objectives. The AAO has absolutely no means of determining what actual tasks are associated with the beneficiary's directing, coordinating, and supervising activities. Furthermore, these various responsibilities are grouped together, despite the director's express request that time allocations be specifically assigned to individual job duties. The remainder of the foreign job description incorporated a similar style of grouping together multiple, often unrelated, activities and assigning a percentage of time to the entire group rather than to each individual job duty. As such, not only did the petitioner fail to properly delineate specific tasks, but it also failed to account for the beneficiary's time in the manner expressly requested by the director.

On appeal, counsel addresses the director's finding that the beneficiary is not managing a subordinate staff of professional, managerial, or supervisory employees, asserting that the beneficiary's staff in the United States is comprised of professionals, who possess the necessary educational credentials. Counsel also restates the beneficiary's various credentials and prior experience in an effort to establish that the beneficiary is qualified for the proffered position. However, counsel's arguments fail to address the inadequate job descriptions and the apparent, and unresolved, inconsistency between the petitioner's U.S. organizational chart and the relevant quarterly wage report. Thus, counsel's argument, listing the various subordinate management positions that are included in the petitioner's organizational chart, is unpersuasive, as it relies on the underlying assumption that there are no unanswered questions regarding whom the petitioner employed and which positions were filled at the time of filing. Additionally, counsel's apparent misconception as to the most significant flaw in the present matter leads her to place undue focus on the beneficiary's discretionary authority and his placement within the U.S. petitioner's organizational hierarchy. The AAO notes that neither factor is being disputed. To explain further, even where a beneficiary's level of authority and position with an organization's hierarchy fit the definition of a manager or executive, the petitioner

must provide a detailed description of duties to establish what specific tasks would consume the primary portion of the beneficiary's time. *See* 8 C.F.R. § 204.5(j)(5). Case law confirms that 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). It is noted that 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). Thus, a petitioner simply cannot establish that it has met these statutory requirements without first providing an adequate description of the job duties to be performed. Here, the petitioner has not met this burden.

Similarly, counsel restates and paraphrases various portions of the foreign job description, again focusing on the beneficiary's qualifications and achievements during his employment abroad. However, as previously stated, the petitioner failed to follow the director's specifications for an adequate job description by providing overly generalized statements, rather than specific job duties, and by assigning time constraints to groups of activities, rather than to specific tasks. Additionally, as discussed above, the organizational chart provided in response to the RFE fails to corroborate claims made in the beneficiary's job description, which repeatedly discussed the beneficiary's personnel oversight authority. Contrary to these indications, the organizational chart does not depict the beneficiary in a role that is indicative of someone who oversees others, as there are no subordinate positions listed. The purpose of providing an organizational chart is to clarify the beneficiary's role within the entity and to corroborate assertions made in the job description. Here, the petitioner has not provided an organizational chart that meets either of these objectives. Thus, not only has the petitioner provided a deficient job description, but it has also provided an organizational chart that fails to depict the beneficiary as someone that was employed in a managerial or executive capacity. Despite counsel's convictions to the contrary, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Thus, for the reasons stated above, the petitioner has failed to overcome two of the grounds cited in the denial by failing to provide sufficient and probative evidence establishing that the beneficiary was employed abroad and that he would be employed in the United States in a managerial and/or executive capacity.

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.