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**U.S. Department of Homeland Security**  
U. S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
Washington, DC 20529-2090



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

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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: **JUN 17 2009**  
LIN 07 052 53263

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 Georgia corporation engaged in the import, export, and retail of household appliances. The petitioner 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.

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 it would employ the beneficiary in a managerial or executive capacity.

On appeal, counsel disputes the director's conclusions and submits a brief along with additional documents in support of his arguments.

The AAO has conducted its own independent review of the documentation on record. Pursuant to a thorough analysis of the petitioner's submissions, the AAO finds that the petitioner submitted sufficient evidence and information to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. Therefore, the first ground for the director's adverse decision is hereby withdrawn. The remainder of this discussion will focus on the second ground cited as a basis for denial.

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 primary issue in this proceeding calls for an analysis of the beneficiary's job duties with the U.S. petitioner. Specifically, the AAO will examine the record to determine whether sufficient evidence has been 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 support of the Form I-140, the petitioner submitted a letter dated November 15, 2006, which includes the following description of the beneficiary's proposed U.S. employment:

[The beneficiary] will continue to plan, develop and establish policies and objectives of [the petitioner]. He will continue to direct and coordinate business contracts and shipments in the entire operation of the North America[n] market and will develop other relevant policies and procedures implementing the overall objective of the parent company. [The beneficiary] will also be active with the Board of Directors and make sure they comply with established policies and objectives of the company. He will continue to re-structuring [sic] personnel within the company and redetermine and evaluate the current operation functions on behalf of the parent company for better business opportunities. [He] will also preside over the Board of Directors and serve as chairman of executive officers to make sure that they comply with established policies and objectives of the company. He will report directly to the parent company for all business matters within the U[.]S[.]A[.]

The director determined that the above job description was insufficient to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. Accordingly, a request for additional evidence (RFE) was issued on December 18, 2007, instructing the petitioner to provide: 1) a detailed description of the job duties the beneficiary would be expected to perform under an approved petition, accompanied by the percentage of time assigned to each job duty; 2) the job titles of the beneficiary's prospective subordinates as well as their respective job duties; and 3) the petitioner's organizational chart, identifying the beneficiary's proposed position.

In response, the petitioner submitted a letter from counsel dated March 10, 2008 in which counsel claimed that the beneficiary is responsible for overseeing five employees including the general manager, an executive assistant, an accountant, a sales manager, and a marketing manager. The petitioner provided an organizational chart listing a total of ten positions, five of which were assigned to specific individuals in the United States and one position assigned to an employee of the foreign parent entity. The remaining positions were not assigned to specific individuals, thus leaving it questionable as to whether the positions were actually filled. The petitioner also provided 2006 Form W-2 statements for four employees, including the beneficiary. Lastly, the petitioner provided a list of duties and responsibilities and the percentage of time allotted to each item on the list. As the director included the job description in its entirety in the notice of denial, the AAO need not restate this information in the current discussion.

On May 22, 2008, the director issued a notice denying the instant petition based, in part, on the petitioner's failure to establish that the beneficiary's proposed position would be within a qualifying

managerial or executive capacity. The director noted that the petitioner provided a deficient description of the beneficiary's proposed job duties, thereby precluding U.S. Citizenship and Immigration Services (USCIS) from being able to determine whether the beneficiary would spend the primary portion of his time performing qualifying tasks.

On appeal, counsel submits a letter dated July 16, 2008 in which he argues that the beneficiary's tasks are scheduled on a daily basis and that it is therefore virtually impossible for the petitioner to foresee when and with whom the beneficiary would have meetings. Counsel further states that the petitioner was only asked for a description of duties, arguing that there was no mention of day-to-day tasks until the director issued the notice of denial. Counsel's arguments, however, are not persuasive and fail to overcome the adverse decision.

First, the AAO notes that the regulation at 8 C.F.R. § 204.5(j)(5) expressly requires that the petitioner provide a detailed description of the beneficiary's proposed employment, clearly describing the job duties to be performed such that a determination can be made that the employment would be within a qualifying managerial or executive capacity. The fact that the director employed the term "tasks" rather than "duties" in his denial is merely a matter of semantics, as no meaningful distinction can be made between the two terms and the degree of detail that is implied by using one term over the other. Precedent case law places further emphasis on the significance of a detailed job description, establishing 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). Furthermore, even if counsel were in any way confused by the director's reference to tasks versus duties, the mere finding that the previously submitted job description was lacking in sufficient detail should have been sufficient to prompt counsel to advise the petitioner that a greater degree of detail was necessary in order to establish eligibility. Here, instead of addressing the deficiency pointed out by the director by providing further information about the beneficiary's proposed employment, counsel merely argues that the director's judgment in issuing the finding was somehow unsound.

Furthermore, counsel interprets the director's comments to mean that the petitioner's error lay primarily in its failure to provide a schedule of the beneficiary's proposed tasks. Contrary to counsel's interpretation, however, the petitioner was not asked to provide the beneficiary's daily schedule. Rather, it was merely asked to explain how the beneficiary plans to carry out the general job responsibilities that are listed in the job description. For instance, the petitioner claimed that 40% of the beneficiary's time would be spent planning and developing policies and objectives and another 40% of his time would be spent supervising, directing, and coordinating marketing strategies. However, the petitioner failed to translate these job responsibilities into the specific tasks that would help explain the means by which the beneficiary plans to fulfill his allegedly managerial or executive role. The director's request was not only reasonable, but was clearly supported by the regulations and precedent case law. Thus, counsel's argument that the director's request was unsound is erroneous and clearly fails to address the relevant issue at hand, i.e., the lack of a detailed description of the proposed employment.

Next, the AAO notes that even where a petitioner provides a detailed job description, this information alone is not sufficient to establish eligibility. Rather, the job description must be considered in light of other highly relevant factors, including 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, despite the beneficiary's top-most position within the petitioner's hierarchy, the petitioner has failed to establish that at the time of filing it had the necessary support personnel available to perform the daily operational tasks such that the beneficiary would be relieved from having to do so. Despite the organizational chart that was submitted in response to the RFE, listing a total of ten positions, the petitioner claimed at Part 5, Item 2 of the Form I-140, that it had four employees at the time of filing. This information is further corroborated by the four 2006 Forms W-2 that the petitioner submitted in response to the RFE, showing that the beneficiary and three other employees were employed by the U.S. entity at the time of filing. In light of the petitioner's original claim and the supporting Forms W-2, it appears that neither the organizational chart, which submitted in response to the RFE, nor the employee list, which counsel provided on appeal, is an accurate representation of the petitioner's staffing structure at the time of filing. Moreover, counsel's list, which includes the names and position titles of five employees, is inconsistent with the names and position titles as they appear in the organizational chart. For instance, counsel lists [REDACTED] as the petitioner's sales manager. However, the same individual was identified in the petitioner's organizational chart as the customer service and warehouse manager. Counsel also identifies [REDACTED] as an executive assistant and [REDACTED] as the marketing manager. However, neither of these individuals was identified in the organizational chart. Therefore, even with regard to [REDACTED] and [REDACTED] both of whom appear on counsel's list and appear to have been employed in 2006 at the time of filing, the AAO cannot make an accurate determination as to the positions they held or the job duties they perform.

In summary, there are two key elements that contribute to the conclusion that eligibility has not been established by the petitioner in the present matter. First, the petitioner has failed to provide a detailed description of the job duties the beneficiary would perform in his proposed position. Second, even if the petitioner had provided an adequate job description of the proposed employment, the record lacks sufficient evidence upon which the AAO can base a finding that the petitioner was able to employ the beneficiary in a qualifying managerial or executive capacity at the time the petition was filed.

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.