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

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FILE [redacted] OFFICE: NEBRASKA SERVICE CENTER Date: MAR 3 0 2009
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IN RE: Petitioner:
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:

[redacted]

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 operating as a consulting firm that offers technology services to business and public sector organizations. It seeks to employ the beneficiary as its director of global delivery services. 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 on the basis of two independent grounds of ineligibility: 1) the beneficiary would not be employed in a managerial or executive capacity within the U.S. entity; and 2) the beneficiary was not employed abroad in a managerial or executive capacity.

On appeal, counsel disputes the director's conclusions and submits a brief in support of his arguments. A full discussion of counsel's points and the director's findings is provided below.

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 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 October 11, 2006, which includes the following description of the beneficiary's employment abroad:

> From January 2002 to September 2003 [the beneficiary] worked as a [s]ales [s]upport [c]oordinator of the [foreign entity]. In his position, [the beneficiary] utilized Capgemini DELIVER methodology to provide sales support and account management services . . . . He was assigned additional executive responsibility on the sales team. During his tenure, he was closely involved with sales executives from the U[.]K[.], France, [the] Netherlands, and [the] U[.]S[.]A[.] in developing solution offerings leveraging the model and resulting in the sale of global projects . . . .
>
> In his position, he was involved, independently as well as in teams, in developing solution offerings and competitive market offerings . . . . On behalf of the organization, he was responsible for making key strategic decisions including pricing, negotiating engagement terms and conditions with clients, determining the right mix of work distribution between location[s], determining the right mix of solutions offerings for clients, etc. He participated in face-[to-]face presentations with clients . . . . He worked on sales proposals . . . providing opportunities from systems integration to outsourcing services. He worked directly with the CEO . . . on multiple strategic initiatives like developing the sales strategy for 2004, deciding the growth strategy for [the foreign entity]. He assisted [e]ngagement [d]irectors and [p]roject [m]anagers in the coordination of sales efforts and distribution of tasks among team members and worked closely with business teams to ensure sophisticated and effective client expectation management/communication management. He directly supervised the sales support team consisting of 4 people.
>
> * * *
>
> In addition to the aforementioned duties, he was responsible for the evaluation, organization, and distribution of project tasks as part of executing [the foreign entity]'s proprietary [applications]. He identified deliverables and ensured their timely execution and adherence to client specifications. . . .

The petitioner also provided the following description of the beneficiary's proposed employment in the United States:

> [The beneficiary has been employed as the [d]irector of [g]lobal [d]elivery [s]ervices for [the petitioner]. Global [d]elivery [s]ervice is the [petitioner's] service line that delivers projects to clients using a combination of onsite, offsite, nearshore and offshore teams . . . . The [g]lobal [d]elivery [s]ervice line is one of six service lines that [the petitioner] has developed. In his capacity as [d]irector, [g]lobal [d]elivery [s]ervices, he is the executive responsible for coordinating all sales activities for the [g]lobal [d]elivery [s]ervices practice. [The beneficiary] is responsible for ensuring that all [of the petitioner's] North-America [sic] based . . . teams receive the appropriate level of support in sales activities[,] including assistance to estimate projects . . ., determining the right composition of service offerings to clients, make pricing/staffing decisions among others. In this role which requires specialized knowledge . . ., he coordinates the sales activities of over 50 sales executives and advises each sales executive on the appropriate utilization of the Distributed Delivery

> Model to maximize the value proposition for their clients, and to increase the win probability for [the petitioner]. He also works closely with all [of the petitioner]'s business leaders . . . advising them of the actions required to successfully deliver solutions to clients . . . .
>
> [The beneficiary] develops [the petitioner]'s profile as a preferred IT [s]ervices [p]rovider, and networks with client executives and [the petitioner's] sales/account management teams to build strong customer relationships. He works with clients to define custom solutions . . . . This includes working with the [s]ales executives to qualify prospective opportunities, coach them on how to position the right solution for the client, [and] help gather required information from clients . . . .
>
> [The beneficiary] participates in solution development activities, and identifies sales opportunities. This includes coaching sales executives and helping them understand how to position the global delivery model for clients, preparing, and customizing marketing collateral to help them position the model for clients, and to constantly support them in better understanding the global delivery message. He provides support . . . to build offers leveraging [g]lobal [d]elivery [s]ervices. He applies his extensive, specialized knowledge . . . in order to assure that optimal value propositions can be developed for the client . . . . He additionally coordinates the solution setup and delivery . . . .

On August 27, 2007, the director issued a request for additional evidence (RFE) instructing the petitioner to provide detailed descriptions of the specific job duties the beneficiary performed during his employment abroad and the job duties he would perform during his proposed position with the U.S. entity. The petitioner was asked to assign a percentage of time the beneficiary spent and would spend performing each enumerated task. The petitioner was also asked to discuss the job titles and job duties of his subordinates and supervisors in his foreign and proposed positions and to provide organizational charts identifying the beneficiary's prior and proposed positions with each employer.

In response, the petitioner provided a letter dated September 25, 2007, which included the requested job descriptions. The description of the beneficiary's proposed position was broken down into four main categories with 30% of the beneficiary's time assigned to each of the first three categories and 10% of his time assigned to the remaining category.

The first category—providing leadership in global sales opportunities—would require teams of staff comprised of three to fifteen technical, marketing, back office, and sales staff working jointly to come up with solutions to address customer needs. The beneficiary would also lead sales presentations and proposals before chief information officers (CIO), chief operations officers (COO), and chief executive officers (CEO). The beneficiary would take the lead in contract negotiations and have the discretionary authority to decide which opportunities to pursue, and which solution is right for a specific client, the cost to the client, and the number of staff members needed to carry out a particular project.

With regard to the second category—profitable growth of the global delivery practice—the beneficiary would be responsible for ensuring that the global delivery practice achieves a sustained

and significant growth, which would be measured by the profit margin level. The beneficiary would be required to make decisions regarding pricing and staff allocation, which may require additional hiring. The beneficiary would also forecast growth of the practice and be assigned budget targets.

The third category—developing/nurturing the global delivery community, including training/career progression—would entail working with counselors in the business units to prepare staff members that are working with the global delivery practice. The beneficiary would also be responsible for establishing, administering, and preparing a community of global delivery practitioners. This would require that the beneficiary makes training available and takes part as a leader in conducting training sessions for the vice presidents, directors, principals, and account managers.

Lastly, the fourth category—engagement oversight and governance—would require that the beneficiary take part in steering committees and project reviews designed to ensure that the petitioner's delivery meets customer expectations. The beneficiary would also meet with CIOs and information technology (IT) directors to make delivery-related strategic decisions to change the petitioner's approach, strategy, or staff assigned to various projects.

The beneficiary's employment abroad was broken down into three categories with 40% of the beneficiary's time being allotted to each of the first two categories and 20% of his time allotted to the remaining category.

The first category—provided leadership in global sales opportunities—required the beneficiary to oversee the sales support analysts, create sales proposals, and make decisions regarding the ultimate approach, methods, estimates, and pricing. The beneficiary generally led three to six staff members in responding to client requests and proposals.

The second category—assisted in solution definition—entailed assignment of sales support analysts to specific sales opportunities and assembling a team of staff members to work on sales proposals and presentations to client executives. The beneficiary led the sales teams to understand client requirements, assigned tasks to the right team members, and reviewed their completed work. The beneficiary was directly involved in writing the proposal and managing the proposal process.

The third category—developed sales and marketing collateral and built community of sales support analysts—required preparing presentations and brochures highlighting the company's capabilities and solutions. The beneficiary was also responsible for training, mentoring, and counseling new sales support analysts and advising the vice president of sales on hiring decisions and performance reviews of the sales staff.

On January 9, 2008, the director issued a decision denying the petitioner's Form I-140, finding that the petitioner failed to establish the beneficiary's foreign and proposed employment as being within a qualifying managerial or executive capacity. With respect to the beneficiary's proposed employment, the director noted that the position appears to be that of team leader whose main goal is to implement the sales approach created by the company. The director found that the evidence does not establish that the beneficiary would supervise employees in his proposed position or that he supervised employees during his employment abroad. Rather, the director observed that the petitioner provided information about the positions the beneficiary has and would indirectly

supervise. Lastly, the director found the beneficiary's foreign and proposed job descriptions to be inadequate in providing insight into the beneficiary's daily activity.

On appeal, counsel asserts that most of the beneficiary's time abroad was spent overseeing the work of subordinate sales support analysts. Counsel explains that 40% of the beneficiary's time was allotted to assigning tasks to the sales support analysts, whose job it was to conduct research regarding each prospective client's business plan, IT requirements, and expectations of the petitioner's offered solutions. Counsel states that another 40% of the beneficiary's time was spent reviewing the work performed by the sales support analysts to determine the sales proposals that best fit each prospective client, and the remaining 20% of his time was spent developing sales and marketing tools to be used by the sales support analysts when they visit the client sites.

While counsel's explanations provide a more telling overview of the beneficiary's employment abroad, the AAO finds that neither his explanations nor the evidence of record establish that the beneficiary was employed abroad in a qualifying capacity. First, the AAO does not agree with the director's findings that the record lacks a sufficient description of job duties. Rather, the AAO finds the petitioner's statements to be sufficiently revealing as to the beneficiary's tasks and responsibilities during his employment abroad. That being said, it appears that the beneficiary's employment consisted of a mix of tasks, some of which cannot be classified as being within a qualifying capacity. As such, it is of utmost importance that the petitioner establish with sufficient clarity how much of the beneficiary's time was spent performing qualifying duties versus the non-qualifying ones. 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).

While the AAO recognizes the petitioner's attempt to account for the beneficiary's time, the fact that the percentage of time was assigned to broad categories which encompass both qualifying and non-qualifying job duties, rather than to specific job duties, precludes the AAO from being able to gauge whether the primary portion of the beneficiary's time was spent performing tasks of a qualifying nature. For instance, providing leadership in global sales opportunities involved creating sales proposals, which is indicative of a task necessary to provide a service and therefore not of a qualifying nature. Additionally, while the petitioner indicated that the beneficiary's leadership role entailed overseeing a team of three to six employees, the record lacks sufficient information to establish that these employees are supervisory, professional, or managerial. The fact that the beneficiary's supervisory job duties have been sufficiently stressed warrants a full discussion of the qualifications of the beneficiary's subordinates and whether they can be deemed supervisory, professional, or managerial. The AAO cannot make any assumptions regarding these key issues without sufficient information and corroborating documentation.

Additionally, assisting in solution definition, a category to which 40% of the beneficiary's time abroad was allotted, poses similar problems, as a significant portion of the tasks included in this category also require that the beneficiary play a supervisory role in working with sales support analysts. As the petitioner has not established that sales support analysts can be deemed supervisory, professional, or managerial, the AAO cannot conclude that any time spent overseeing their work can

be deemed as qualifying. Furthermore, the petitioner stated that the beneficiary was directly involved in communicating with onsite account sales teams and writing up client proposals, which are tasks necessary to provide a service and therefore non-qualifying.

Next, the AAO will address the beneficiary's proposed U.S. employment, which is plagued with similar shortfalls as those discussed above in relation to the beneficiary's employment abroad. With regard to the 30% of the beneficiary's time that would be allotted to directing sales and supervising a sales team, the petitioner has not established that the sales team is comprised of supervisory, professional, or managerial personnel. The petitioner also stated that the beneficiary would lead sales presentations and proposals, which are non-qualifying tasks. While the petitioner stated that a portion of the beneficiary's time spent in this category would be attributed to using his discretion in making decisions, which entails choosing clients, and selecting the right pricing and solution to individual clients' problems, it is unclear how much of the beneficiary's time would be specifically devoted to making these decisions.

With regard to the second category—profitable growth of global delivery practice—the petitioner again focused on the beneficiary's discretionary authority in making decisions regarding pricing, staff allocation, and hiring. However, it is unclear how the discretionary authority in the capacity of this category is distinguished from the discretionary authority in the context of the above category. Additionally, although the petitioner claimed that the beneficiary would forecast growth of the global delivery practice and work within a given budget, specific tasks were not provided to explain how the beneficiary will carry out his role of ensuring the growth of this practice. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. *See* 8 C.F.R. § 204.5(j)(5).

Additionally, the petitioner failed to establish that the tasks associated with building the global delivery community, the third category, are within a qualifying capacity. The petitioner stated that the beneficiary's tasks would include developing talent, planning careers, and counseling staff who work with the global delivery practice. While these tasks may be essential for the purpose of building a strong work force, it is unclear how they can be deemed qualifying, as they require the beneficiary's direct involvement in the oversight and training of employees who have not been established as being supervisory, professional, or managerial.

Lastly, while counsel cites prior AAO decisions in an effort to support his assertions, both of the cited cases were unpublished and therefore are not binding on USCIS employees in the administration of the Act.

Accordingly, in view of the above, the AAO concludes that the record lacks evidence establishing that the beneficiary's subordinates, either abroad or in his proposed position with the U.S. entity, were and would be supervisory, professional, or managerial. Additionally, the petitioner has failed to assign the percentage of time that was and would be spent specifically in the performance of the non-qualifying tasks that are incorporated in the descriptions of the beneficiary's foreign and proposed employment. Therefore, the AAO cannot conclude that the primary portion of the beneficiary's time during his employment abroad and during his proposed employment with the U.S. entity has been and would be spent working in a qualifying managerial 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.