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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]
LIN 07 124 51461

Office: NEBRASKA SERVICE CENTER

Date: **MAY 26 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:

SELF-REPRESENTED

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the Commonwealth of Virginia. It claims to be in the business of management, consulting and investment. It seeks to employ the beneficiary as its vice president. 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, concluding that the petitioner had not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner contends that the director's decision is in error and submits further evidence in support of its assertions on appeal.

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 beneficiary will be employed in a primarily managerial or executive capacity by the United States entity.

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 an appendix to the Form I-140, Immigration Petition for Alien Worker, filed on March 22, 2007, the petitioner stated that the beneficiary's duties in the United States will include:

1. Supervising a team of general managers who manage [the] Finance, Accounting, Sales and Marketing, Operations, Administration and Information Technology departments.
2. Complete managing the responsibilities [sic] of major operations in the United States which include the following:
 - a. Supervising a team of top management personnel who manage the entire company operations at [the petitioning company] in the United States.
 - b. Providing key strategic management discretionary directives [sic] for the company operations for the Finance, Accounts, Sales, Marketing, operations, administration and information technology departments.
 - c. Manage finance, accounts policies, marketing strategies and operation policies.
 - d. Set guidelines for accounting, financial, marketing, operations and IT management.
3. Communicate company's financial status to top management and implement management recommendations regarding overall operations of the company.
4. Makes [sic] hiring, discharging and promotion decisions for Finance, Accounting, Sales, and Marketing, Operations and Information Technology departments.

The petitioner claimed that the U.S. company has 15 employees, including the beneficiary, and provided an organizational chart showing the beneficiary as vice president below the company's president. The positions listed under the beneficiary include: a general manager of accounting and finance whose subordinates include a financial manager, an accountant, and a book-keeping clerk; a general manager in sales and marketing whose subordinates include a sales and marketing manager, a business development manager and sales/customer service staff; a general manager of operations and administration whose subordinates include an administrative assistant, human resource employee, and an administrative clerk; and a general manager in information technology who supervises one network administrator. Other than the beneficiary, no names were provided for the

other positions on the chart. The petitioner attached brief position descriptions for the beneficiary's claimed subordinates.

The petitioner also submitted a copy of its 2006 Internal Revenue Service Form 1120S, U.S. Income Tax Return for an S Corporation, which shows that the company paid a total of \$88,553 in salaries and wages for that year. In addition, schedule K-1 to the Form 1120S indicates that the company is doing business as a motel. The company's address is stated as [REDACTED]

[REDACTED] The schedule K-1 also reflects a franchise fee in the amount of \$54,397 and utilities totaling \$46,944, amounts that appear to be consistent with the operation of a motel.

On August 6, 2007, the director issued a request for further evidence (RFE) to demonstrate that the beneficiary qualifies as either a manager or an executive. Specifically, the director requested: (1) a statement signed by an authorized official of the U.S. entity describing the beneficiary's intended employment in the United States, which should include the dates of employment, job title, specific job duties, types of employees supervised, level of authority and title and level of authority of the beneficiary's immediate supervisor; (2) an organizational chart for the U.S. company, which must include the names and educational levels of all employees listed; (3) a copy of any approval notice for any petition filed on the beneficiary's behalf as an L-1 intracompany transferee; and (4) copies of IRS Form W-2, Wages and Tax Statement, earning statements for the years 2004 through 2006 for all employees of the U.S. company. The director also requested evidence showing that the U.S. company has been doing business for at least one year.

In response to the RFE, with respect to the U.S. employment, the petitioner submitted the same job description previously provided. The petitioner further indicated that the beneficiary's start date would be October 1, 2007 or the date the petition is approved; the beneficiary would supervise and have complete authority over the general managers of several departments; and the beneficiary would be under the supervision of the company's president. The petitioner provided the names and educational levels of the employees listed on the U.S. company's organizational chart and showed a total of approximately 25 employees subordinate to the beneficiary. The petitioner submitted a single Form W-2 for the beneficiary for the year 2006, showing that he received \$31,000 in wages during that year. In addition, the petitioner submitted partial copies of its U.S. income tax returns for the years 2005 and 2006, which indicated that the company paid salaries in the amounts of \$22,150 in 2005 and \$80,553 in 2006, and its projected financial statement for the year 2007, which does not include an amount for salaries and wages. As was the case in 2006, the 2007 projected financial statement anticipated \$47,500 in franchise fees, \$25,000 for electricity and \$40,000 for other utilities – again, amounts that appear consistent with a motel operation. Finally, the petitioner submitted copies of management agreements, dated in March, April and August of 2006, with four of its alleged clients.

On December 13, 2007, the director denied the petition, concluding that the petitioner had not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The director found that the evidence submitted does not establish the petitioner's true

business, the beneficiary's actual position in the company, or the number and qualifications of the petitioner's employees. Specifically, the director noted that the job descriptions the petitioner submitted for the beneficiary and his subordinates are generic text book descriptions and the copies of college degrees submitted do not evidence the level of education that would establish the beneficiary's subordinates as professionals. The director also noted that (1) the petitioner failed to submit the requested Forms W-2 for its employees other than the beneficiary; (2) the information regarding wages and salaries on the petitioner's tax return and the beneficiary's Form W-2 for 2006 raises questions as to whether the petitioner indeed has 14 other employees on staff as claimed; and (3) no information was provided to show whether the employees worked full-time or part-time. The director concluded that the record fails to establish that a majority of the beneficiary's duties would be managerial in nature, or that he would be primarily supervising a staff of professional, managerial or supervisory personnel who would relieve him from performing non-qualifying duties.

On appeal, the petitioner asserts that as a management company, it does not have access to the Forms W-2 of the employees of the companies it manages. The petitioner resubmitted the management agreements it had provided in response to the RFE, this time with attachments detailing the scope of services to be provided to its clients. The petitioner further contends that the director erroneously concluded that the foreign degrees of the beneficiary's subordinates are not equivalent to U.S. bachelor's degrees; the petitioner submits several newspaper and journal articles to support this claim. The petitioner also asserts that the beneficiary's duties are "clearly executive/managerial" and submits the same job description for the beneficiary that was provided earlier, as well as descriptions for the staff positions purportedly under the beneficiary's supervision in the U.S. company.

Upon review, the AAO finds that the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily executive or 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.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

On review, the petitioner has provided, on three different occasions, the same vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner's description of the beneficiary's duties includes such generic phrases as "managing the responsibility of major operations in the States"; "[s]upervising a team of top management personnel who manage the entire company operations"; "[p]roviding key strategic management discretionary directives for the company operations for the finance, accounts, sales, marketing, operations, administration and information technology departments"; "[m]anage finance accounts policies, marketing strategies and operation policies"; and "implement management

recommendations regarding overall operations of the company." The petitioner did not, however, define or specify the U.S. company's strategies, policies, or management recommendations, or clarify what are the day-to-day tasks within the different departments of the company and who actually performs them. In fact, as the director noted, the petitioner has failed to clearly define the nature of its own business. 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)). 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).

Furthermore, the evidence is insufficient to establish that the beneficiary actually supervises and controls the work of other supervisory, professional, or managerial employees, or indeed any staff at all, as claimed. Although the petitioner submitted an organizational chart that places 25 or more employees under the beneficiary, there is no evidence that these individuals are actually employed by the U.S. company. In the RFE, the director requested that the petitioner submit Forms W-2 for all of its employees. The petitioner failed to submit these documents for any of the claimed employees other than the beneficiary. This evidence is critical as it would have established that the individuals named on the organizational chart are actually employed by the U.S. company. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The 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).

It is noted that the petitioner did not submit any other evidence to show that these individuals are in the U.S. company's employ. In addition, as the director noted, the small amount of salary paid by the U.S. company in 2006 as stated in its tax return, and the absence of any figure for salaries and wages on its projected financial statement for the year 2007, raise serious doubt that the U.S. company actually employs 14 or more persons in addition to the beneficiary as it claimed. Moreover, the petitioner's explanation on appeal that it was unable to provide the requested Forms W-2 for any employee other than the beneficiary because it does not have access to "other client companies' employees' W-2s" contradicts and undermines its claim that these persons are in fact employees of the U.S. company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Since the petitioner has failed to establish that the U.S. company has other employees in addition to the beneficiary, it follows that the petitioner has also failed to establish that the beneficiary supervises and controls the work of other supervisory, professional, or managerial employees within

the organization. *See* 8 U.S.C. § 1101(a)(44)(A)(ii).¹ Similarly, the petitioner has made no claim, nor has it offered any evidence to show, that the beneficiary manages an essential function within the organization, or a department or subdivision of the organization. *Id.* As such, the petitioner has failed to show that the beneficiary would function in a primarily managerial capacity in the U.S. entity.

In addition, although the petitioner claims on appeal that the beneficiary's duties are "clearly executive/managerial," the vague job description provided by the petitioner fails to demonstrate that the beneficiary would function in a primarily executive capacity in the United States. Further, the petitioner has not provided any other evidence to show that the beneficiary would function in a primarily executive capacity, as defined under section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

Finally, the petitioner has failed to address the inconsistencies between the evidence of record and the petitioner's claims regarding the nature of its business. As noted earlier, while the petitioner claimed on its Form I-140 to be in the business of "management, consulting and investment," the evidence, specifically the company's Form 1120S for the year 2006, indicates that the company actually owns and operates a motel. As such, the veracity of the information provided with regards to the job duties of the beneficiary and his subordinates must be called into question. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 591.

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in a primarily executive or managerial capacity in the United States. For that reason, the petition will be denied.

Beyond the decision of the director, the AAO finds the evidence does not establish that the beneficiary was employed by the foreign entity in a primarily executive or managerial capacity.

The petitioner claimed that from March 2000 through January 2005, the beneficiary was employed as a director by [REDACTED] a company located in Ahmedabad, India, in which the U.S. company has partnership interest. In a letter dated December 22, 2004 submitted with the initial petition, the proprietor of the foreign company described the beneficiary's position in the foreign entity as follows:

¹ The AAO notes the petitioner's assertions and submissions on appeal regarding the educational qualifications and job duties of the individuals whose names appear on the U.S. company's organizational chart. However, given the petitioner's failure to show that these persons are actually employed by the U.S. company, evidence that they may qualify as "professionals" is not relevant in this instance.

[The beneficiary] oversees and manages Accounts, Finance, Sales and Operations departments. [The beneficiary] has been a very successful management executive. He takes decisions on hiring as well as firing of the managers. He coordinates activities by scheduling work assignments, setting priorities, and directing the work of subordinates. He makes decisions on promotions and yearly bonuses. He evaluates and verifies manager's performance through the review of completed work assignments and work techniques. He operates at a senior level. He directs and participates in the development, interpretation, evaluation, and recommendation of policies, procedures, and rules for the effective operation of company. He has complete authority over departmental managers.

In response to the RFE, the petitioner submitted a letter from the foreign entity's president, dated December 22, 2004, which restates the same job description for the beneficiary's overseas position that was previously provided. The petitioner also submitted: (1) general job descriptions for the positions of accounts manager, sales manager, and operations manager, which the petitioner claimed to be managers whom the beneficiary directed; (2) a copy of a diploma showing that the beneficiary received a bachelor of commerce degree from Gujarat University in 2004; (3) a copy of a certificate recognizing the beneficiary as manager of the year within the foreign entity in 2004; and (4) a copy of the foreign entity's salary register for the year 2003-2004, which lists the names of individuals and amounts paid without specifying the positions of those individuals within the organization.

Again, 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). Here, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis in his position with the foreign entity. The petitioner described the beneficiary's duties using such vague phrases as "coordinates activities by scheduling work assignments, setting priorities, and directing the work of subordinates," "evaluates and verifies manager's performance through the review of completed work assignments and work techniques," "operates at a senior level" and "directs and participates in the development, interpretation, evaluation, and recommendation of policies, procedures, and rules for the effective operation of company." The petitioner did not, however, define the policies, procedures or rules that he purportedly worked with while employed by the foreign company. For that matter, the record contains no statement or explanation of the operations, or indeed the nature of the business, of the foreign company.² Similarly, the petitioner provided no evidence that clarifies where the beneficiary stood within the corporate structure of the foreign company, nor did the petitioner identify the beneficiary's subordinates or the work that they performed and that the beneficiary supposedly

² The AAO notes that the record contains a copy of the foreign entity's Deed of Partnership, dated June 1, 2006, which states, "The business of partnership shall be to carry business of Automobiles [sic], including sale of oil, petrol, diesel, repairs and service station, sale and purchase of auto parts, etc. However it will be open for the partnership firm to carry on any other business with mutual consent." However, there is no information in the record with regard to the exact nature and scope of the foreign entity's operations at the time of the beneficiary's employment with the company.

directed and evaluated. Again, 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. 165. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1108. In light of these deficiencies in the evidence, the AAO finds that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity as required by section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). For this additional reason, the petition will be denied.

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). 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 at 1043.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.