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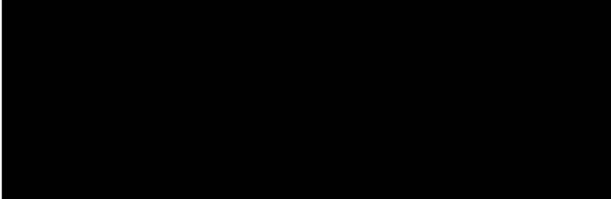
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER
LIN 07 211 52622

Date: OCT 05 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 New York corporation that 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 determined that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity and denied the Form I-140 on that basis. On appeal, counsel disputes the director's conclusion and submits an appellate brief as well as additional documents in support of his arguments. A full discussion of the director's findings and the petitioner's submissions 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 primary issue in this proceeding is whether the petitioner established that it would employ the beneficiary 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.

Although the petitioner provided various tax documents in support of its Form I-140, no information was provided with regard to the beneficiary's proposed employment. Accordingly, on July 22, 2008, the director issued a request for additional evidence (RFE). The petitioner was instructed to provide a specific list of job duties for the beneficiary's proposed position, including an estimate of the percentage of time allotted to each listed job duty. The petitioner was also asked to provide a

detailed organizational chart depicting the beneficiary's position and identifying the beneficiary's immediate supervisor and subordinates, if any.

In response, a letter dated August 22, 2008 was submitted on the letterhead of the beneficiary's foreign affiliate. The following description was offered for the beneficiary's proposed employment:

[The petitioner] has hired a Production Manager, Office Manager, Accountant and Freight Forwarding Agent, who are all responsible to [the beneficiary] and are directly under his supervision. Additional[ly], two Business development Officers, and Sales and Logistics managers are in the process of being hired for the U.S. branch. Functioning autonomously, [the beneficiary] is responsible for managing and directing all development activities of [the petitioner] in co-relation with Mechanical Parts LLC as they pertain to our international operations. [The beneficiary] will be the senior level person in the U.S. organization responsible for expanding, organizing, directing, and developing the business.

As General Manager, [the beneficiary] uses his independent discretion and authority in identifying the cultivating new information sources, and developing strong and mutually beneficial relationships with suppliers and buyers of [m]echanical and technical products. He identifies, develops and maintain[s] these sources. [The beneficiary] ensures that immediate delivery of consignments is made to different locations, through their freight forwarding agent, locates buyers and suppliers, and ensures that first-hand information on new products is provided to the parent company, which is critical to our business which has built its reputation on providing the best mechanical tools in a timely manner. In managing these developments, [the beneficiary] is [sic] ensures that Mechanical Parts Company receive[s] priority treatment in receiving details on the availability, terms and conditions and special features of mechanical tools, for import and export. All sales leads given by [the beneficiary] are actively pursued by the Marketing Manager and Purchasing Manager. [The beneficiary] regularly meets with suppliers and buyers to identify new products and their development that will improve our capabilities to meet client needs. He oversees the establishment of requirements, deadlines, and deliverables, and ensure[s] proper communication of these to the clients and management. He will conduct presentations when needed for current and prospective clients.

[The beneficiary] regularly corresponds and meets with various department heads to review current policies and procedures and develop appropriate plans. He formulates strategies and plans to improve the network of buying and selling our product line. [He] has autonomous control over, and exercises wide latitude and discretionary decision-making in establishing the most advantageous courses of action for the successful management and direction of our activities. [The beneficiary] will be devoting approximately 60% of his time to development activities.

In addition, being a start[-]up operation[, the beneficiary] is required to perform a variety of activities necessary to adequately set-up [sic] a new office. He is

responsible for hiring personnel for the start-up operation. This position is an "Executive Position" in consort with modern business trends.

Approximately 20% of [the beneficiary]'s time will be utilized towards generating reports, and reviewing daily reports and 20% of [his] time will be utilized in managing the day[-]to[-]day functions of the office.

The petitioner also provided a copy of its organizational chart, which depicts the beneficiary at the top of the hierarchy with four direct subordinates, including a purchasing manager, an office manager, an accountant, and a freight forwarding agent. The chart also shows that the beneficiary is assisted by other purchasing managers via telephone and email.

In a decision dated September 30, 2008, the director denied the petition, finding that, despite receiving assistance with many of his daily tasks, the beneficiary is directly involved in the petitioner's daily operational tasks. The director commented on the fact that the beneficiary is listed as the contact person on numerous sales invoices and also observed a discrepancy between information found on the petitioner's web site and the petitioner's organizational chart. In general, the director found the petitioner to be lacking in organizational complexity and therefore unable to relieve the beneficiary from having to primarily perform non-qualifying job duties.

On appeal, counsel explains that the beneficiary's name frequently appears on various purchase invoices because the corporate credit/debit cards name him as the authorized user. Counsel also states that the beneficiary is the only one authorized to approve any major purchase or banking transaction. In support of this explanation, the petitioner provides bank documents naming the beneficiary as the individual authorized to deposit and withdraw funds as well as a front and back copy of the check card issued by the banking institution. While the AAO is satisfied with the explanation and supporting evidence offered in response to the director's criticism, the job description that was provided in response to the RFE strongly indicates that sales-related tasks are an essential part of the beneficiary's U.S. position. [REDACTED] the foreign entity's managing director and author of the letter containing the beneficiary's job description, clearly stated that the beneficiary locates the buyers and suppliers and that he is the key person who obtains sales leads that the marketing and purchasing managers then pursue. As the petitioner failed to describe the beneficiary's job duties according to the format specifically requested by the director, the AAO has no way of knowing how much of the beneficiary's time would actually be spent locating buyers and suppliers, neither of which can be deemed as tasks of a qualifying nature. 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). In light of this statutory requirement, the petitioner's inability to establish how much of the beneficiary's time would be spent performing non-qualifying tasks precludes the AAO from making a finding of eligibility in this matter.

Additionally, although [REDACTED] generally stated that 60% of the beneficiary's time would be spent on development activities, the petitioner was expressly asked to assign a percentage of time to each of the beneficiary's specific daily tasks. Simply claiming that a majority of the beneficiary's

time would be devoted to "development activities" is insufficient, as it remains unclear as to where specific tasks fall under within the category of "development activities." Stating that the beneficiary would formulate strategies and plans to improve the buying and selling network is equally ambiguous, as these general terms fail to convey a meaningful understanding of the specific underlying tasks the beneficiary would engage in to accomplish his broad business agenda.

also stated that 20% of the beneficiary's time would be spent generating and reviewing daily reports. However, he failed to specify the types of reports that would be generated and reviewed, nor is it clear whether the beneficiary would be reviewing reports that he himself would be generating or whether others would be generating reports for the beneficiary's review, and if so, what the subject matter of those reports would be. Lastly, stated that the remaining 20% of the beneficiary's time would be spent managing the day-to-day functions of the office. However, there is no specific mention of the actual means by which the beneficiary would engage in such oversight, nor is there an explanation of what is meant by "the day[-]to[-]day functions."

On appeal, counsel asserts that the beneficiary is responsible for running the petitioning organization, which would include setting long- and short-term goals and creating organizational policies. While these responsibilities are certainly indicative of the level of discretionary authority that is inherent to someone employed in a managerial or executive capacity, U.S. Citizenship and Immigration Services cannot grant the immigrant visa classification sought herein to an individual whose position does not primarily involve job duties of a qualifying nature. In the present matter, counsel readily acknowledges that the beneficiary will solicit buyers by giving presentations and that he will also negotiate prices for supplies and raw materials. In fact, it appears that these non-qualifying tasks are integral to the beneficiary's U.S. employment. Thus, despite the beneficiary's discretionary authority over all business matters concerning the petitioner, the AAO cannot approve this petition, as the statements of counsel and the petitioner strongly indicate that the primary portion of the beneficiary's time would be devoted to the performance of non-qualifying tasks.

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.