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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

B4

MAR 16 2010

FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER Date:  
SRC 08 014 57333

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:

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

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference immigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will remand the matter for further consideration.

The petitioner is a Florida corporation engaged in the import, export, and distribution of automobiles. It seeks to employ the beneficiary as its chief financial officer. 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 petitioner failed to submit sufficient evidence to establish that it had been doing business in the time and manner prescribed at 8 C.F.R. § 204.5(j)(3)(i)(D); and 2) the petitioner failed to provide sufficient evidence to establish that it had secured business premises to house its business operation.

On appeal, the petitioner has provided additional evidence in the form of one year's worth of shipping documents and bills of lading as well as additional photographs of the petitioner's business premises. The AAO finds that such documentation is sufficient to overcome both of the grounds cited as the bases for denial.

Nevertheless, the AAO finds that the petition in the present matter does not warrant approval. This finding is based on two independent grounds of ineligibility that had not been previously addressed in the director's decision: 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.

In reviewing the petitioner's response to the director's request for additional evidence (RFE), which was issued on December 2, 2008, the AAO takes note of the description of the beneficiary's employment with the foreign entity and his prospective employment with the U.S. petitioner.<sup>1</sup> It is noted that the description of the beneficiary's employment and accompanying percentage breakdown indicate that the primary portion of the beneficiary's time has been and would be spent performing daily operational tasks rather than tasks within a qualifying managerial or executive capacity as claimed. More specifically, the beneficiary has been tasked with filing statutory reports, performing financial and inventory auditing, reporting the financial information to a board of directors, carrying out the payroll function, and providing support to the sales team, tasks which cumulatively consume 50% of the beneficiary's time. It cannot be concluded that these are the tasks of someone employed within a managerial or executive capacity as defined by sections 101(a)(44)(A) and (B) of the Act. Rather, they are daily operational tasks necessary to provide a service. 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).

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<sup>1</sup> Although the petitioner did not provide a separate job description for the beneficiary's foreign employment, the AAO takes note of an email the beneficiary sent to the petitioner's counsel in which the beneficiary stated that the New Zealand office where he was previously employed "is nearly identical" to the office of the prospective U.S. employer, thus implying that the job duties he performed abroad mirror those he would perform in his employment for the petitioning entity.

Accordingly, the matter will be remanded to the director for a new decision, which shall examine the beneficiary's job duties with the foreign and petitioning entities. The director may issue a notice requesting any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

**ORDER:** The decision of the director dated January 29, 2009 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.