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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: TEXAS SERVICE CENTER Date: MAY 06 2010
SRC 08 048 52086

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 reconsider or reopen, 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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Delaware corporation that seeks to employ the beneficiary as its credit 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 concluded that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity and denied the petition on that basis. On appeal, counsel disputes the director's conclusion.

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 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.

In support of the Form I-140, the petitioner submitted a letter dated July 5, 2007, which includes the following list of the beneficiary's proposed responsibilities:

- Responsible for maintaining optimal sales in USA in compliance with our company's established credit policy.
- Implement and manage collection procedures.
- Establish special terms and conditions for high-risk accounts.
- Maintenance of accounts receivable including management of claims and deductions.
- Management of customer inquiries, collections, and charge-off/recoveries.

- Visit customers to obtain information about their operations in order to approve credit limits.
- Evaluate customers' financial information for purposes of determining credit limits.
- Reports to our international credit management concerning outstanding balances and collection efforts.
- Coordinated and administer systems and procedures to reduce bad debt.
- Dealing and negotiating with credit insurance companies.
- Dealing with credit reports companies[.]
- Interfaced with sales department, logistics and senior management for the purpose of relaying customer worthiness.

On May 12, 2008, the director issued a request for additional evidence (RFE) instructing the petitioner to provide a detailed description of the beneficiary's exact proposed daily job duties. The petitioner was also asked to include a discussion of the employees who would be directly subordinate to the beneficiary as well as the employees' job titles, educational degrees, and their job duties.

In response, the petitioner submitted a letter dated June 6, 2008, which included the beneficiary's duties and responsibilities from the initial support letter as well as the following additional duties and responsibilities:

- Dealing with [the petitioner]'s IT Department in order to get the best credit and collections reports and a correct system to help to fulfill credit and collections goals.
- Evaluate customers' commercial and bank references.
- Renegotiate sales terms with customers.
- Authorize change of credit terms or extend customer credit terms.
- Dealing with staffing service companies.
- Meetings with commercial department and administrative department to give them an updated situation about credit and collection, and get for them feedback about [the] steel market situation.
- Establish, follow and fulfill all processes related with SOX (Sarbanes-Oxley).
- Establish, follow and fulfill all necessary processes of [the petitioner's] quality Policy, and internal quality process that apply for all Ternium group companies.

The petitioner also stated that the beneficiary would oversee the work of a collection analyst with a high school diploma and two credit assistants, one possessing a high school diploma and the other possessing a baccalaureate degree. The petitioner stated that the beneficiary would have the discretionary authority to hire employees for his team, coordinate and evaluate the employees' functions, evaluate each employee's performance and report the evaluations to the company's chief financial officer, and revise and approve employee requests for time off.

With regard to the company's credit policies, the petitioner stated that the beneficiary would have discretionary authority to do the following: approve production orders totaling up to \$20,000, categorize an account as past due for referral to collection, cease production or shipment of orders on past due accounts, cancel customer credit limits for past due balances, and involve the commercial department in issues regarding customer collections.

In a decision dated June 28, 2008, the director denied the petition concluding that the beneficiary's subordinates are not supervisory or professional employees. The director further determined that, despite the beneficiary's position title, the petitioner failed to establish that the beneficiary has the requisite discretionary authority over the employees in, and the general operations of, the credit department.

The AAO has reviewed the petitioner's record in its entirety and finds that the director properly declined to approve the petition. However, the AAO does not concur with the director's finding that the beneficiary lacks the necessary degree of discretionary authority. To the contrary, the AAO finds that both the beneficiary's discretionary authority and his placement within the petitioner's organizational hierarchy are consistent with the statutory requirements. Thus, rather than focusing on the beneficiary's discretionary authority, the AAO finds that the beneficiary's job description should have been the focal point of the director's analysis.

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 the present matter, the beneficiary's job description lists numerous non-qualifying tasks that the beneficiary would perform in addition to managing non-professional and non-supervisory subordinate positions. More specifically, the petitioner indicated that the beneficiary has and would continue to negotiate credit terms, visit customers to obtain information for credit approvals, report to international credit management, negotiate with credit insurance companies, deal directly with credit reporting and collection companies, and negotiate sales terms with customers. These operational job duties fall within the category of tasks that are necessary to provide services and are therefore deemed as non-qualifying. As previously stated, in addition to these non-qualifying tasks, the beneficiary would also assume the role of a first-line supervisor in the course of his management of non-supervisory and non-professional positions. While the AAO acknowledges that one of the beneficiary's subordinates—the Argentinean-based credit assistant—possesses a baccalaureate degree, it is not apparent that the degree is necessary to carry out the tasks required of the position, as indicated by the fact that the individual who fills the credit assistant position in the United States does not have a baccalaureate degree.

In light of the above, the AAO cannot conclude that the beneficiary has or would primarily allocate his time to the performance of tasks within a qualifying capacity. To the contrary, despite the beneficiary's discretionary authority over the policies and employees within the credit department, the record indicates that

the beneficiary would allocate the primary portion of his time to being a first-line supervisor and to performing operational tasks that are necessary to provide services. On the basis of this determination, the AAO cannot conclude that the beneficiary would be primarily employed in a qualifying managerial or executive capacity.

Furthermore, while not addressed in the director's decision, the record does not support a finding of eligibility based on at least one additional ground. Namely, 8 C.F.R. § 204.5(j)(3)(i)(B) states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to his entry into the United States as a nonimmigrant to work for the same employer. In the instant matter, the job description of the beneficiary's employment abroad, which the petitioner included in its initial support letter, lacks sufficient information to enable the AAO to determine what specific tasks the beneficiary performed. Case law has established 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). Without a detailed description of the tasks the beneficiary performed during his employment abroad, the AAO cannot conclude that the beneficiary allocated the primary portion of his time to performing tasks within a qualifying managerial or executive capacity.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional ground of ineligibility discussed above, this petition cannot be approved.

As a final note, service records show the petitioner's previously approved L-1 employment of the beneficiary. However, the AAO notes that each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter. The prior nonimmigrant approvals do not preclude USCIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Furthermore, if the previous nonimmigrant petition was approved based on the same assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on

behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.