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**U.S. Department of Homeland Security**  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



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



B4

DATE: **APR 26 2011**

OFFICE: TEXAS SERVICE CENTER

FILE:   
SRC 09 187 52351

IN RE: Petitioner:   
Beneficiary:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 Florida 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 denied the petition based on the determination that the petitioner failed to establish that the beneficiary would be employed in the United States in a managerial or executive capacity.

On appeal, counsel disputes the denial, arguing that the director failed to explain why the petitioner's organizational complexity is not sufficient to employ the beneficiary in an executive capacity.

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 sufficient evidence was submitted to establish that 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 provided the following description of the beneficiary's proposed employment with the U.S. entity:

- The [beneficiary] shall be responsible for overseeing the entire operation. Make sure that standard operating procedures (SOP) are in place and implement company's goals. Supervise and provide feedback and advice to management on the handling of international and local accounts. Oversee all staff related issues, including the power to hire, promote and fire management. Coordinates and schedules work loads, as well as staff retention. Control budget-operating expenses. Represent the company before all authorities and private parties.
- Manage and amend, as necessary, policies and procedures towards successful achievement of new and existing company projects. Sign loans and checks, as well as control of cash flow.

Implement effective pricing, quotations and terms of sale policies and procedures, and price conflict resolution. Implement changes to policies based on market demands.

- Study and analyze market patterns on demand/supply for company's products/services, as well as benchmarking. Contract out; approve company's promotional material, such as publications and others. Establish customers credit policies. Implement warranty and service policy. Make necessary changes to company policies based on market behavior and company's capability. Define technological strategies in order to increase sales.
- Negotiate contracts on behalf of the corporation. Manage company's list of suppliers, including outsourcing of services such as shipping companies. Manage sub-contracting of staff and support services.

The petitioner also provided position descriptions of the administrative and operations managers, the accounts payable/receivable analyst, and the sales coordinator as well as an organizational chart depicting the placement of all five employees within the petitioner's organization. The chart shows the beneficiary at the top of the hierarchy with the two managers as his direct subordinates followed by the accounts payable/receivable analyst supervised by the administrative manager and the sales coordinator supervised by the operations manager.

On August 8, 2009, the director issued a decision denying the petitioner's Form I-140. The director found that the petitioner lacked the organizational complexity to support the beneficiary in a managerial or executive capacity. The director also determined that the petitioner provided a deficient description of the beneficiary's proposed employment, failing to establish that the beneficiary would allocate the primary portion of his time to tasks within a qualifying managerial or executive capacity.

On appeal, counsel asserts that the director's analysis was flawed, challenging the director's reliance on the petitioner's staffing in making the adverse finding. Counsel also disagrees with the finding that the petitioner did not adequately describe the proposed employment and therefore failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. Counsel contends that the petitioner needs an executive to head its five-person entity with annual sales totaling \$1 million.

After reviewing the evidence of record and considering counsel's statements, the AAO finds that counsel has failed to overcome the basis for denial.

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 AAO will then consider the information regarding the beneficiary's proposed job duties in light of the petitioner's organizational hierarchy and the beneficiary's position therein in order to gauge the petitioner's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks. In the present matter, the record lacks a comprehensive description of the beneficiary's day-to-day tasks and does not adequately establish that the petitioner's staffing composition at the time of filing was sufficient to relieve the beneficiary from having to primarily perform non-qualifying operational tasks.

In reviewing the petitioner's description of the beneficiary's proposed employment, the AAO observes that the statements are virtually devoid of the specific tasks that the beneficiary would perform on a daily basis. It is

noted that published case law supports the emphasis placed on a detailed job description, holding 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). In the present matter, the beneficiary's job description is replete with broad statements that focus on the beneficiary's placement at the top of the petitioner's organizational hierarchy and the discretionary decision-making authority that accompanies such a position. For instance, the petitioner indicates that the beneficiary will assume the responsibility for "overseeing the entire operation," which will include implementation of company goals, overseeing the petitioner's personnel, controlling the company's budget, and representing the company to outside parties. However, it is unclear how these broadly stated business objectives translate into specific daily tasks. The AAO similarly questions the specific daily tasks that are associated with the beneficiary's role in managing and amending policies and procedures. Although the petitioner explained that part of the beneficiary's policy-making role would deal with pricing the petitioner's products and services, no other policies were specified to fully convey an understanding of the specific job duties that are associated with the beneficiary's role as the petitioner's policy maker. 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).

The AAO also notes that portions of the beneficiary's job description imply that the beneficiary would likely perform non-qualifying tasks that are required for the petitioner's daily operation. For instance, without further clarification, it is not readily apparent that job duties such as analyzing market patterns on supply and demand, implementing warranty policies, negotiating contracts with suppliers and shippers, and directly overseeing subcontractors fit the statutory definition of managerial or executive capacity. While the AAO acknowledges that no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks, the petitioner assumes the statutory burden of establishing that the non-qualifying tasks the beneficiary would perform are only incidental to his/her proposed position. 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).

Additionally, the AAO notes that while a detailed job description is admittedly one major component in determining the petitioner's eligibility, the petitioner is expected to provide sufficient evidence to corroborate the claims being made. Thus, even if the petitioner were to provide a comprehensive job description that adequately describes the tasks the beneficiary would perform on a daily basis, merely satisfying this requirement would be meaningless without sufficient evidence establishing that the organization that seeks to hire the beneficiary has the human resources to relieve the beneficiary from having to primarily perform non-qualifying operational job duties.

In the present matter, the AAO cannot conclude that the staffing composition the petitioner had at the time of filing warranted the employment of the beneficiary in a managerial or executive capacity. This determination is not to be confused with the petitioner's need for an employee who would head its organization. It is reasonable to conclude that any organization, regardless of its size, will require at least one employee who would assume a leadership role that would entail a high degree of decision-making authority and supervisory oversight. However, it is not uncommon for an employee in an organization with limited staffing to meet his or her responsibilities as the organization's leader by simultaneously performing qualifying and non-qualifying tasks based on the needs of a particular entity. Therefore, the fact that an individual manages a

business does not necessarily establish that the proposed employment fits the definition of managerial or executive capacity within the meaning of section 101(a)(44) of the Act. While the AAO acknowledges the varying needs from one entity to another, a petitioner's needs do not serve to override the petitioner's legal burden of having to establish that the beneficiary would primarily perform duties of a qualifying managerial or executive nature. Any petitioner that is not ready and able to employ the beneficiary in a qualifying capacity at the time the Form I-140 is filed would not merit the immigration benefit sought in the present matter. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Based on the evidence and information furnished in the present matter, the AAO cannot conclude that the petitioner met its burden of establishing that it was able to employ the beneficiary in a qualifying managerial or executive capacity at the time of filing the petition. For this reason, the petition may not be approved.

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.