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



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

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DATE: **MAY 25 2011** OFFICE: NEBRASKA SERVICE CENTER

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

The petitioner is a California 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 two grounds of ineligibility: 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 the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

On appeal, counsel disputes the director's decision and contends that the director overlooked large portions of the beneficiary's job descriptions which the petitioner had previously provided in response to the request for additional evidence (RFE).

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 two primary issues in this proceeding call for an analysis of the beneficiary's job duties. Specifically, the AAO will examine the record to determine whether the beneficiary was employed abroad and whether he would be employed 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 from counsel dated May 9, 2007. Counsel did not provide a description of the beneficiary's employment abroad other than to state that the beneficiary was employed as general manager from June 2000 to 2004. Counsel provided the following description of the beneficiary's proposed employment with the U.S. entity:

In charge of the day-to-day operations of the company. Formulate and enforce company policies for sales and purchasing, operational system, and accounting payable, etc. Set up company business goals and plans in order to improve sales performance. Responsible for

recruitment, training, supervising employees in each department and provided training for the various products. Responsible for directing the sales department such as making decisions on major sales contracts, setting goals for promotion activities, directing and communicating with chief of every department to work with each others in order to meet the sales goals. Accomplish industry trend research and analysis as well as consumer research studies to search for possible expansion and developmental direction for the company. Exercise discretionary authority over company's financial matters such as budget, operational cost, fund management, etc. Review company's expansion progress and financial situation on a regular basis.

On December 2, 2008, the director issued an RFE in which the petitioner was instructed to provide detailed descriptions of the beneficiary's employment abroad and his proposed employment with the U.S. entity. The director asked the petitioner to provide a percentage breakdown of the specific job duties the beneficiary performed abroad and those he would perform in the proposed position with the U.S. entity. The petitioner was also asked to provide both entities' organizational charts.

In response, counsel for the petitioner provided a statement dated February 12, 2009, which included the following description of the beneficiary's employment abroad in his position as general manager:

Responsible for doing research on quality and cost of different woods in various timberlands in Brazil by visiting the sites, by exchanging information with professional[s] in [the] timber industry, and by collecting data online. Search for economic and market trends to adjust the plan[s] and goal[s] for company development for short[-]term and long[-]term. Search and look for more sources of export for planning future development. (20% of time)

Review custom[s] documents for exporting timber to China. Keep abreast of new regulations in regard to [the] timber industry and exportation of timber. (10% of time)

Direct timber purchase[s]. [The beneficiary was r]esponsible for quality control of the wood and design[ing] the quality assurance process based on different kind of wood from purchasing to exporting to China. (30% of time)

Review accounting journals and tax documents regularly to ensure the company is financially healthy. Check with current financial performance and the conclusion of past periods and years to make and adjust [the] company[s] developing direction and [the] executed steps. (10% of time)

Oversee the inventory and ensure that the delivery is within schedule. (10% of time)

Responsible for public relation[s] of the company and improvement of [the] company's image. Participate in trade show[s] on behalf of the company. Represent the company to get involved in cultural festivals and to donate wood for churches and schools construction. (5% of time)

Establish procedure of working system and company policy. Employ qualified staffs [sic] for each position and train them with correct concept of doing business and wood knowledge.

Introduce employees to new wood suppliers and training them to be able to work with the new suppliers. Enable the employees to work safely. Have routine meeting[s] with staffs [sic] for working projects, plans, and business strategy. (10% of time)

Strengthen the efficiency of performance of working team by consistently updating computerized system for high performance. (5% of time)

The petitioner also provided the foreign entity's organizational chart depicting the beneficiary at the top of the hierarchy with a purchaser, an accountant, a sales person, a customs documentation specialist, and a driver as his direct subordinates. The remaining employee at the bottom tier of the organizational hierarchy was a purchasing assistant who was depicted as the purchaser's subordinate.

Counsel provided the following description of the beneficiary's proposed employment:

Oversee wood flooring sales orders processing. Responsible [for] communicat[ing with] Huzhou Yushun Wood in China regarding the delivery and quality of wood flooring products and [with] Exportadora Amazonia in Brazil for wood materials for flooring products. (20% of time.)

Keep track of customer's satisfaction after sales and [make suggestions to] the companies in Brazil and China [on] how to improve products. Make recommendation[s] to company staff of [sic] how to strengthen [the] quality of customer services. Communicate with each department to work with each others [sic] in order to meet the sales goals[.] (20% of time)

Represent [the] U.S. company to [sic] participate in trade shows. Review rule[s] of samples for each trade show. Responsible to [sic] follow up with and provide more product information to potential customers. (15% of time)

Review financial and tax documents regularly to ensure the company is financially healthy. Check with current financial performance and the conclusion of past periods and years to make and adjust [the] company[']s developing direction and executed steps. (10% of time)

Set up company business goals and plans in order to improve sales performance regularly. (5% of time)

Participate in conference[s] for wood flooring industry and keep abreast of new wood flooring materials and products. Search for new wood flooring products and materials Analyze the possibilities to add product lines for these new wood flooring products. Recommend updated manufacturing methods and materials used to Huzhou Yushun Wood in China. Accomplish industry trend research and analysis as well as consumer research studies to search for possible expansion and developmental direction for the company in [the] wood flooring industry. (15% of time)

Responsible for recruitment, training, supervising employees in each department and teach them knowledge of the various wood flooring products and the most updated knowledge of new wood flooring products and materials. Introduce employees to new customers and train

them to be able working [sic] with new customers. Enable employees to work safely in the company. (10% of time)

Keep updating our computerized working programs for high performance. (5% of time)

The organizational chart provided for the U.S. entity shows that the petitioner's staffing and organizational hierarchy are similar to the foreign entity in that the beneficiary is depicted at the top of a hierarchy that is comprised of various subordinates, including a chief financial officer, a driver, a warehouse employee, a logistics specialist, a sales person, a customs documentation specialist, and an office administrator.

In a decision dated May 21, 2009, the director denied the petition. The director briefly summarized the job descriptions provided by counsel in the response to the RFE and found that the petitioner failed to specify the beneficiary's actual day-to-day tasks in either position. The director further stated that the petitioner failed to establish that the beneficiary's employment, both abroad and in the U.S., was and would be primarily comprised of tasks within a qualifying managerial or executive capacity.

On appeal, counsel asserts that the director's decision was erroneous, basing his argument primarily on the fact that the director did not restate the job descriptions provided in the RFE response in their entirety. Counsel contends that restating the job descriptions only in part is indicative of the director's failure to consider the job descriptions in their original form. Lastly, counsel argues that the job descriptions offered in response to the RFE contained sufficiently detailed information about the beneficiary's past and proposed job duties and further asserts that there are no regulations that expressly require the petitioner to provide a detailed description of the beneficiary's daily job duties.

The AAO finds that counsel's arguments are not persuasive and fail to overcome the grounds for denial.

First, there is no statute, regulation, or precedent decision compelling the director to repeat, verbatim, any of the information provided by the petitioner, whether that information pertains to the beneficiary's job duties or some other fact that relates to the petitioner's statutory eligibility. Contrary to counsel's assertion, it is within the director's full discretionary authority to compose an adverse decision with whatever information he or she deems necessary in order to effectively convey the basis for denial. Here, there is no question that the director did just that, despite the fact that he chose not to restate the provided job descriptions in their entirety. Moreover, the fact that the original job descriptions were not repeated is not an accurate indicator of negligence on the director's part in failing to consider all relevant information.

With regard to counsel's assertion that a list of the beneficiary's specific job duties is not expressly required by regulation, 8 C.F.R. § 103.2(b)(8)(iii) provides the director with broad discretionary authority to request additional evidence to establish the petitioner's eligibility (or lack thereof) even when the petitioner has submitted all initial evidence. In fact, 8 C.F.R. § 103.2(b)(14) states that the petitioner's failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. Moreover, with regard to the beneficiary's proposed employment, the regulation at 8 C.F.R. § 204.5(j)(5) expressly requires the petitioner to provide a written job offer that "clearly describe[s] the duties to be performed by the alien."

In light of the above, the AAO finds that the director's focus on the job descriptions offered by the petitioner was justified and counsel's failure to comply with the specific terms of the request was properly noted as a

contributing factor to the adverse decision. In its *de novo* review of the job descriptions, the AAO also finds that the information provided by counsel was not sufficiently detailed. Despite the director's specific request that the petitioner provide a list of the beneficiary's job duties and assign a percentage of time to each individual job duty, counsel provided job descriptions that lumped various duties and responsibilities together, thus failing to assign time constraints to individual tasks. This separation of tasks is particularly critical when a job description is comprised of a mixture of both qualifying and non-qualifying tasks. As it is the petitioner's burden to establish that the beneficiary's time abroad as well as in his proposed position with the U.S. entity was and would be, respectively, allocated primarily to qualifying tasks, the deficient format in which the beneficiary's job descriptions were provided precludes the AAO from being able to determine just how much of the beneficiary's time in each position is attributed to qualifying tasks and how much of his time is attributed to the non-qualifying operational tasks that are necessary to produce a product or to provide services. 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). While the AAO acknowledges that no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks are only incidental to the beneficiary's qualifying employment.

In the present matter, the record includes descriptions of the beneficiary's foreign and proposed positions that include numerous non-qualifying tasks. With regard to the beneficiary's foreign employment, counsel stated that the beneficiary conducted research on various woods and industry trends, kept control over the company's inventory, trained staff, some of whom do not appear to have been managerial or professional employees, and updated the company's computer system. These are indicative of non-qualifying operational job duties whose specific time allocations were not specified. Additionally, the AAO notes that while the petitioner indicated that the beneficiary directed the purchase of timber and was responsible for quality control, no specific tasks were cited to explain how the beneficiary met these key responsibilities, which together consumed 30% of the beneficiary's time.

With regard to the description of the beneficiary's proposed employment, the job description is overly broad with vague job responsibilities and cites various non-qualifying job duties without assigning time constraints to indicate what portion of the beneficiary's time would be specifically attributed to performing the petitioner's daily operational tasks such as communicating with companies regarding product delivery, tracking customer satisfaction and addressing issues related to customer service, attending trade shows to showcase the company's products and services, recruiting and training non-managerial and non-professional employees, and updating the company's computerized programs.

As indicated above, in examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). Published case law also supports the significance of 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). The information provided in the present matter fails to establish that the primary portion of the beneficiary's time, either abroad or in his proposed position with the U.S. entity, has been or would be allocated primarily to tasks of a qualifying nature. Despite the beneficiary's top rank within each entity's organizational hierarchy, the record does not establish that the beneficiary was and would be relieved from having to spend the primary portion of his time carrying out non-qualifying tasks. As noted earlier, 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. at 604. Based on the evidence furnished, the AAO cannot conclude that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For these reasons, the petition may not be approved.

As a final note, service records show the petitioner's previously approved L-1 employment of the beneficiary. 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). Similarly, 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 a previous nonimmigrant petition was approved based on the same unsupported 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.