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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

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U.S. Citizenship
and Immigration
Services

B4



DATE: **SEP 07 2011**

OFFICE: TEXAS SERVICE CENTER

FILE: 

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 The AAO concludes that the director's decision must be withdrawn and the matter remanded to the Texas Service Center for further consideration.

The petitioner is an airline that provides its services on a multinational scale. It seeks to employ the beneficiary in the position of assistant station 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 its ability to pay the beneficiary's proffered wage and denied the petition on that basis.

After reviewing the record, the AAO concludes that the director's finding was not warranted. As such, the director's decision is hereby withdrawn.

Notwithstanding the director's erroneous finding with regard to one ground of eligibility, the AAO finds that the petitioner may be ineligible for the immigration benefit sought based on other grounds, which the director did not address in his decision.

The regulation at 8 C.F.R. § 204.5(j)(3)(i) states that the petitioner must provide the following initial evidence in support of its Form I-140:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

Additionally, 8 C.F.R. § 204.5(j)(5) states that the prospective U.S. employer must provide a statement describing the job duties the beneficiary is expected to perform in the proposed position in order to establish that the beneficiary will be employed in a qualifying managerial or executive capacity.

In the present matter, the record shows that in response to a request for evidence (RFE), which the director issued on November 12, 2008, the petitioner provided job descriptions regarding the beneficiary's foreign and proposed employment. After reviewing the duties listed in the job descriptions, the AAO finds that the primary portion of the beneficiary's time regarding both the foreign and U.S. employment is not allocated to

qualifying managerial or executive tasks. Rather, the list of duties includes numerous tasks that are indicative of daily operational tasks.

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 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). In the present matter, despite the fact that the RFE expressly instructed the petitioner to assign time allocations to each of the beneficiary's foreign and proposed job duties, the petitioner failed to include this information in its response, thus precluding the director from being able to ascertain precisely how much of the beneficiary's time was and would be allocated to qualifying tasks versus those that are deemed non-qualifying.

Furthermore, the RFE instructions include a request for organizational charts pertaining to the foreign and U.S. employers such that the beneficiary's placement within each organization's hierarchy can be evaluated. However, the response did not include this critical documentation. Although the petitioner appears to have submitted a photocopied organizational chart in support of the initial filing of the petition, the photocopy is unclear and neither the names nor the position titles included in the document are legible. It is noted that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In light of the above, the AAO finds that the record does not currently include the evidence and information that is needed for a favorable decision with regard to the instant Form I-140. Therefore, the director should review the record and issue another notice requesting the additional evidence that is deemed necessary in order to determine the petitioner's eligibility for the benefit sought.

ORDER: The decision of the director dated April 10, 2009 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.