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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  
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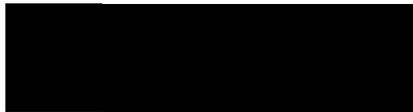


B4.



DATE: **APR 25 2012** 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 president. 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.

In support of the Form I-140 the petitioner submitted a statement dated November 11, 2008, which included relevant information regarding the petitioner's eligibility. The petitioner also provided supporting evidence, including the petitioner's financial and corporate documents as well as documents pertaining to the petitioner's foreign affiliate.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for additional evidence (RFE) dated June 10, 2009 informing the petitioner of various evidentiary deficiencies. The RFE included a request for a definitive statement describing the beneficiary's specific job duties abroad and with the U.S. entity. The director also asked for evidence and information regarding the beneficiary's subordinates in both positions.

The petitioner provided a response statement from counsel, dated July 21, 2009, in which counsel included percentage breakdowns of the beneficiary's responsibilities with the foreign and U.S. entities. The list was accompanied by a percentage breakdown of the job duties the beneficiary would be expected to perform for both entities. The job description did not distinguish between the beneficiary's roles and positions within the two separate entities and thus failed to indicate how much of the beneficiary's time would be allocated to the job duties the beneficiary would perform for the petitioning entity.

After reviewing the record, the director concluded that the petitioner failed to establish eligibility based on the following four independent grounds: 1) failure to establish that the beneficiary was employed abroad for the requisite one-year period; 2) failure to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; 3) failure to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and 4) failure to establish that the U.S. entity had been doing business for one year prior to filing the petition in accordance with 8 C.F.R. § 204.5(j)(3)(i)(D). The director therefore issued a decision dated October 21, 2009 denying the petition.

On appeal, counsel submits a brief challenging all four of the conclusions listed above.

After reviewing the record in its entirety, it is the AAO's finding that the petitioner has submitted sufficient evidence to establish that it meets the requirements cited at 8 C.F.R. § 204.5(j)(3)(i)(D). The AAO will therefore withdraw the fourth ground as a basis for denial. However, with regard to the three remaining grounds, the AAO finds that counsel's arguments are not persuasive and fail to overcome the director's adverse findings. As noted, the petitioner's submissions have been reviewed. All relevant documentation that pertains directly to the key issues in this matter will be fully addressed in the discussion below.

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 first issue to be addressed in this proceeding is whether the beneficiary was employed abroad for the time period that is required by statute and regulation. The regulation at 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 to the United States as a nonimmigrant to work for the same employer.

In the denial, the director pointed out that counsel's July 21, 2009 statement indicated that the beneficiary entered the United States on September 6, 2006, approximately nine months after the beneficiary assumed his position as chief executive officer with the foreign entity. The director therefore determined that the beneficiary was not employed abroad for one full year as required by statute and regulation.

On appeal, while counsel concedes that the beneficiary did in fact enter the United States on September 6, 2006 to be employed by the petitioning entity, he claims that the beneficiary spent an aggregate of six more months abroad working at the foreign entity after having commenced his employment with the petitioner. Specifically, counsel asserts that the beneficiary spent an additional three months in Mexico in 2007 and again in 2008 prior to filing the petition in December of 2008. Counsel urges the AAO to review the Form I-94 that was submitted along with the Form I-140 petition at the time of filing.

The AAO finds that while the Form I-94 referenced by counsel does show that the beneficiary reentered the United States on November 5, 2008 subsequent to his initial entry in September of 2006, there is no documentation that establishes when the beneficiary departed the United States to enter Mexico. In other words, while the Form I-94 documents the beneficiary's reentry into the United States, it does not establish

the date of the beneficiary's departure from the United States and entry into Mexico. Furthermore, even if the petitioner provided evidence to show that the beneficiary remained in Mexico for the claimed 3-month period, further evidence is needed to establish that the beneficiary was actually working for the foreign entity during that time period abroad. Counsel's claim that the beneficiary similarly worked abroad during a period of three months in 2007 is also not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the deficiencies discussed above, the AAO finds that the petitioner has failed to establish that the beneficiary was employed abroad for one year during the statutorily requisite time period and on the basis of this initial adverse finding, the instant petition cannot be approved.

The two remaining issues to be addressed in this proceeding call for an analysis of the beneficiary's employment with the U.S. and foreign entities. Specifically, the AAO will examine the record to determine whether the beneficiary's employment abroad and his proposed employment in the United States fit the definition of 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 examining the executive or managerial capacity of the beneficiary, the AAO will look first to the description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). The AAO will also consider other relevant information including each entity's organizational hierarchy, the beneficiary's position therein, and each entity's respective ability to relieve the beneficiary from having to primarily perform the daily operational tasks.

In reviewing information that pertains to the beneficiary's role within the foreign entity, the AAO finds that the record lacks a sufficient description of the job duties that the beneficiary performed during his employment abroad. Although the job description pertaining to the foreign employment indicates that the beneficiary allocated 50% of his time to directing and coordinating the company's business plan and policy development and supervising the company's general manager, sales manager, and production manager, counsel's use of broad terms like directing, coordinating, and managing does not convey a meaningful description of the specific tasks that the beneficiary performed. The petitioner provided no information about the foreign entity's business plan, nor was there any discussion of the policies that the beneficiary developed and implemented that would clarify how the beneficiary's role regarding the foreign entity's business plan and policies translated to tasks the beneficiary completed on a daily basis.

Additionally, the petitioner failed to adequately explain how the beneficiary managed the market planning, advertising, and sales through the general manager, whose job description does not clarify how she handled the marketing and advertising on a daily basis. The AAO also notes that the educational credentials and organizational placement of the production manager, whom the petitioner listed as the beneficiary's subordinate, was a managerial, supervisory, or professional employee, regardless of position title.

With regard to the beneficiary's proposed employment, the petitioner offered a similar, overly generalized job description that fails to list specific tasks that the beneficiary would undertake on a daily basis. The AAO points out that a well-defined job description with itemized daily tasks is of utmost importance, as 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). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id* at 1103. Thus, while the beneficiary's top-most position in the petitioner's organizational hierarchy and his discretionary authority with respect to key business matters are both crucial to meet the statutory definitions of managerial and executive capacity, a detailed description of the beneficiary's daily job duties is equally essential in order to allow the AAO to fully assess whether the beneficiary qualifies under either or both statutory definitions. The petitioner has failed to provide an adequate job description, thus failing to establish that the beneficiary would be employed in a managerial or executive capacity.

The AAO finds that the record lacks sufficient evidence to establish that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity. For these two additional reasons, this petition cannot be approved.

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.