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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

[Redacted]

B4

DATE: **FEB 10 2012** OFFICE: NEBRASKA SERVICE CENTER [Redacted]

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:

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 vice 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.

The director denied the petition based on the determination that the petitioner failed to establish that the beneficiary was employed abroad in a managerial or executive capacity. Additionally, while the director did not issue an affirmative finding with regard to the employment capacity of the beneficiary's proposed position with the U.S. entity, he noted that there was a discrepancy between the position description and the petitioner's organizational chart. Namely, the director observed that while the beneficiary's proposed job description includes supervising the marketing department, the petitioner's organizational chart did not actually include either a marketing department or marketing personnel.

On appeal, counsel disputes the director's decision in an appellate brief in which he attempts to supplement the deficient job description by providing additional information about the beneficiary's employment abroad. The petitioner also provided supplemental documentation in the form of an employment letter, which addresses the beneficiary's employment abroad, and organizational charts for the U.S. and foreign entities.

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 submitted sufficient evidence to establish that the beneficiary was employed abroad 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, [REDACTED] in her capacity as CEO of the petitioning entity, submitted a statement dated April 30, 2007 in which she discussed the petitioner's corporate composition as well as the beneficiary's employment abroad and in the United States. The petitioner also provided a statement from [REDACTED] dated January 17, 2005 confirming the beneficiary's dates of employment abroad, a brief list of the

beneficiary's proposed job responsibilities with the U.S. entity, the petitioner's corporate documents, the petitioner's tax and financial documents for 2005 and 2006, business invoices showing sales made by ██████████ ██████████ in November and December 2006, ██████████ lease, and the foreign entity's partnership deed and export documents for various dates in 2003.

On February 4, 2008, the director issued a request for evidence (RFE), which informed the petitioner that the record was lacking sufficient evidence showing that the petitioner meets relevant statutory and regulatory criteria. Accordingly, the petitioner was instructed to provide, in part, a supplemental job description, including a specific discussion of the beneficiary's job duties with the foreign entity. The petitioner was also asked to provide an organizational chart showing the beneficiary's position abroad.

In a statement dated March 13, 2008, counsel provided a list of the various documents that were being submitted in response to the director's RFE. The response included a statement from the petitioner dated March 12, 2008, organizational charts for the U.S. and foreign entities, and tax and wage documents from 2002-2007 pertaining to the petitioner and its employees.

On July 28, 2009 the director issued an adverse decision denying the petition based on the finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The director noted that the organizational charts that were submitted in response to the RFE did not include the beneficiary.

On appeal, counsel submits a brief in which he asserts that the beneficiary was promoted to the position of general manager in the year 2000 during the course of her employment with the petitioning entity. Counsel states that the beneficiary was responsible for directing and coordinating personnel-related activities, interviewing and selecting employees, entering into contracts with independent contractors, approving product designs, and reviewing and approving purchase invoices. Counsel further states that the beneficiary prepared a company manual for employee recruitment and training and rewrote numerous contracts after consulting with management and attorneys. In a supplemental statement dated September 23, 2009 from the foreign entity's CEO, the beneficiary's foreign employment was said to include attending meetings with the managerial committee, with the board, and with shareholders; helping to expand the business; and improving the company's customer base.

With regard to the foreign entity's organizational chart, counsel explains that the petitioner misunderstood the director's request and therefore submitted organizational charts that reflected the foreign entity's organizational structure at the time the RFE was issued. The petitioner therefore now submits a supplemental organizational chart that purportedly reflects the foreign entity's organizational hierarchy as of April 2002, which was directly prior to the beneficiary's departure from her position with the foreign entity in order to commence her employment with the petitioner. The organizational chart shows the beneficiary in the position of general manager, which is directly subordinate to the entity's two partners, ██████████ ██████████. The chart also shows that the beneficiary's subordinates included a production manager with two subordinate production designers, a marketing manager with no subordinates, and a finance manager with two subordinate accountants. It is noted that the petitioner did not provide any of the beneficiary's subordinates' job responsibilities as previously requested in the RFE. 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).

After reviewing counsel's brief and all relevant submissions that pertain to the beneficiary's employment abroad, the AAO finds that the supporting documents fail to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

In examining the executive or managerial capacity of the beneficiary, the AAO finds that the description of the beneficiary's job duties is a key element. Published case law supports the emphasis that has been placed on a detailed job description, finding 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). As such, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient as this general information fails to convey a meaningful understanding of the specific tasks the beneficiary performed on a daily basis keeping in mind that the petitioner must establish that the primary portion of the beneficiary's time was allocated to tasks within a qualifying 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).

In the present matter, the petitioner has repeatedly provided documents that give only general information about the beneficiary's foreign employment. Thus, while the AAO is able to gauge a certain sense of the beneficiary's discretionary authority within the foreign organization, no meaningful insight can be gained as to the beneficiary's specific daily tasks. For instance, no tasks were provided to explain how precisely the beneficiary directed and coordinated personnel-related activity. Based on the organizational chart describing the foreign organization, the hierarchy appears to be composed of numerous non-supervisory and non-professional workers. It is therefore highly critical that the petitioner articulate, with sufficient specificity, the beneficiary's involvement with those non-supervisory and non-professional workers in order to determine whether the tasks the beneficiary performed in association with her personnel-related responsibilities were within a managerial or executive capacity. The AAO is also unable to determine how the beneficiary's role in selecting and interviewing prospective employees is anything other than a human resources responsibility. Aside from relaying the beneficiary's discretionary authority, employee recruitment does not fit the statutory criteria for managerial or executive capacity. The AAO is similarly skeptical of the qualifying nature of the beneficiary's tasks associated with preparing the foreign entity's recruitment and training manual. Without further explanation, the job duties associated with preparing tutorial material for the foreign entity appear to be operational tasks that are necessary to produce a product or to provide services. It is noted that any 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

With regard to the beneficiary's job description, the record is unclear as to the specific tasks the beneficiary performed in her effort to help expand the foreign entity's business and build its customer base. There is an underlying indication that the beneficiary may have performed certain marketing-related tasks that would not be deemed as tasks of a qualifying managerial or executive nature.

Although the foreign entity's organizational chart that was submitted on appeal depicts the beneficiary at an elevated position within the staffing hierarchy, the AAO is unable to match the chart with the list of the beneficiary's assigned job responsibilities. In other words, the job duties fail to expound on what the chart seemingly indicates is a managerial role in which the beneficiary supervised a production manager, a marketing manager, and a finance manager. Simply creating a chart that illustrates different management

levels is not sufficient without a detailed list of the job duties explaining precisely what tasks the beneficiary performed, how she functioned within the organizational hierarchy, and how the beneficiary's subordinates functioned to relieve the beneficiary from having to spend her time performing primarily non-qualifying tasks. The petitioner has failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. On the basis of this conclusion, the instant petition cannot be approved.

Furthermore, the record does not support a finding of eligibility based on additional grounds that were not previously addressed in the director's decision.

First, the AAO finds that neither the beneficiary's U.S. job description nor the petitioner's organizational chart establishes that the beneficiary's proposed employment in the United States would be within a qualifying managerial or executive capacity.

Additionally, the record does not contain sufficient evidence to establish that the petitioner meets the regulatory criteria discussed at 8 C.F.R. § 204.5(j)(3)(i)(D), which requires the petitioner to establish that it had been doing business for at least one year prior to filing the Form I-140. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

The petitioner originally claimed that it has created three separate retail operations—two retail outlets that sell Indian garments and one medical supply store doing business as [REDACTED]—all of which currently operate under the guise of the petitioning entity. The petitioner also provided numerous sales invoices issued by [REDACTED] in the course of doing business. The record, however, is devoid of any evidence to establish that the medical supply operation is part of the petitioner's corporate operation. Rather, the record contains a photocopy of [REDACTED] business lease, which names two individuals rather than the petitioner as the tenant. The lease indicates that the two signing parties operate under the name [REDACTED]. This document indicates that [REDACTED] may be a sole proprietorship and while the sole proprietorship may share common ownership with the petitioning entity, there is no indication that [REDACTED] is part of the petitioning entity as claimed as no evidence has been submitted to corroborate the petitioner's claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The record does not contain any other evidence to suggest that the petitioner meets the requirements at 8 C.F.R. § 204.5(j)(3)(i)(D).

Lastly, the record lacks evidence to establish that the foreign entity continues to do business, thus indicating that the petitioner may no longer be a multinational entity. The regulation at 8 C.F.R. § 204.5(j)(2) defines "multinational" as the qualifying entity, or its affiliate, or subsidiary, which conducts business in two or more countries, one of which is the United States. Although the petitioner provided evidence to show that the foreign entity was doing business in 2003, there is no evidence to establish that the foreign entity was doing business at the time the petition was filed and continues to do business to the present day.

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 grounds of ineligibility discussed above, this petition cannot 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.