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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

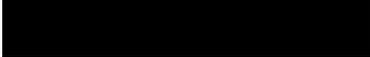


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DATE: **FEB 22 2012**

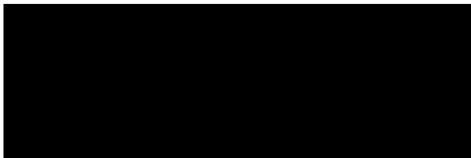
OFFICE: TEXAS SERVICE CENTER

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 appeal will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its functional 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.

In support of the Form I-140 the petitioner submitted a statement dated November 14, 2009, which included a description of the beneficiary's proposed employment. The petitioner also provided supporting documents, including the U.S. entity's organizational chart, a commercial leasing agreement, tax and payroll documents, and documents that establish the petitioner's ownership and corporate existence. Additionally, the petitioner submitted documents pertaining to the U.S. parent entity, which owns the petitioner directly, as well as documents pertaining to the foreign entity, which owns the petitioner indirectly.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a notice of intent to deny (NOID) dated December 17, 2009 informing the petitioner of various evidentiary deficiencies. The NOID included a request for a definitive statement describing the beneficiary's specific job duties. The director instructed the petitioner to list the proposed job duties and to assign a time allocation to each one. The petitioner was also asked to discuss the beneficiary's subordinates in terms of their respective job duties and educational levels.

The petitioner provided a response, which included a list of the responsibilities that are assigned to the beneficiary in his capacity as functional manager of the petitioner and its U.S. parent corporation. 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 that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity. The director therefore issued a decision dated February 8, 2010 denying the petition. The director found that the petitioner submitted an overly broad job description and listed some job duties that he deemed to be non-qualifying.

On appeal, counsel submits a brief in which he disputes the denial, contending that the director's decision fails to cite to any specific job duties that were included in the previously submitted job description. Counsel cites a U.S. Citizenship and Immigration Services (USCIS) memorandum in support of this assertion.¹ Additionally, counsel challenges the director's reference to the job description as broad and general and contends that the job description provided an accurate account of the beneficiary's daily job duties. Counsel stresses the beneficiary's position at the top of a hierarchy that is comprised of multiple organizations, which the beneficiary manages through other managers and supervisors, and he questioned why the director did not

¹ USCIS memoranda merely articulate internal guidelines for service personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

discuss specific aspects of the petitioning entity or its purpose and stage of development. Counsel states that the beneficiary “**exclusively manages a complex managerial function**” that he claims is essential to the organization. (Emphasis in original). See p. 7, appellate brief.

The AAO finds that counsel’s arguments are not persuasive and fail to overcome the director’s denial. The petitioner’s submissions have been reviewed and all relevant documents that pertain directly to the key issue 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 primary issue to be addressed in this proceeding is the beneficiary’s employment capacity in his proposed position with the petitioning U.S. entity. Specifically, the AAO will examine the record to determine whether the petitioner submitted sufficient evidence to establish that it 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.

As a preliminary matter, the AAO notes that the content of the instant discussion will be limited to the beneficiary's role and job duties with the petitioning entity. While the AAO takes notice of documentation that shows the existence of a parent-subsidiary relationship between [REDACTED] and the petitioner, the former entity did not file the Form I-140 and therefore is not a party to the matter that is being addressed herein. See 8 C.F.R. § 204.5(j)(2). As such, any job duties the beneficiary performed or would perform for [REDACTED] are not relevant here and will not be addressed.

In 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 this information in light of the petitioner's organizational hierarchy, the beneficiary's position therein, and the petitioner's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks. The information pertaining to the beneficiary's role within the petitioning entity failed to distinguish the job duties the beneficiary intends to perform in his position with the petitioning entity from those he plans to perform in his position with the petitioner's U.S.-based parent entity. In reciting the list of job duties at Subsection B in the document titled, "Response to Request for Evidence," the petitioner indicated that the

beneficiary would coordinate finances and support operations, confer with managers, review financial statements, and direct human resources for both companies. Part I of the Form I-140 clearly names [REDACTED] as the petitioning entity, which operates as a beauty salon. In light of the fact that the U.S. parent entity operates as a property developer, it is unclear how the beneficiary plans to carry out identical job duties for two separate businesses in two entirely distinct industries.

According to the percentage breakdown of the beneficiary's job duties, a considerable portion of the beneficiary's time would be allocated to tasks that are unrelated to the management of the petitioning entity. The record shows that 20% of the beneficiary's time would be spent meeting with property management companies and other clients in his pursuit of business opportunities that are directly related to [REDACTED] of [REDACTED] and another 20% of his time would be spent researching new business prospects. With regard to the latter, the petitioner has not shown how conducting market research can be deemed a qualifying managerial or executive task. Additionally, the petitioner broadly stated that the beneficiary would set managers' goals and expectations for 5% of his time and he would set policies and standards and ensure employee compliance for another 15% of his time. The petitioner did not specifically identify any actual goals or policies the beneficiary has put in place or state what actual underlying tasks the beneficiary would perform in relation to his policy-setting responsibilities.

The petitioner has not clarified the tasks involved in managing the corporation's legal compliance and accounting or ensuring licensure renewal. Without further explanation, both responsibilities would seem to involve underlying tasks that are of an operational nature and thus are not within a qualifying managerial or executive capacity. While 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).

Furthermore, USCIS cannot approve a petition without a clear explanation of the job duties the beneficiary would be expected to perform. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient. 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). Here, the record shows that the petitioner is a beauty salon that is run on a daily basis by a manager and an assistant manager who oversee the work of licensed cosmetologists. If the petitioner has two individuals who seemingly manage the beauty salon on a daily basis, it is unclear what the beneficiary himself would be doing on a daily basis in the context of a beauty salon.

Given the lack of a detailed account of the beneficiary's job duties within the context of the petitioner's business, the AAO cannot conclude that the petitioning entity has either the need or the capability to employ the beneficiary in a capacity that is managerial or executive such that the primary portion of the beneficiary's time would be spent performing tasks of a qualifying nature. In light of the deficiencies that have been discussed in this decision, the AAO finds that the petition does not warrant approval and the director's decision will be affirmed.

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.