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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**



84

DATE:  
**FEB 22 2012**

OFFICE: NEBRASKA SERVICE CENTER



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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry 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 Florida corporation engaged in “automobile repair and servicing”, and it seeks to employ the beneficiary as its president and 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 the determination that the petitioner failed to establish that the beneficiary would be employed by the petitioner in a managerial or executive capacity.

On March 30, 2010, the petitioner filed an appeal seeking review of the director's decision. The petitioner disagreed with the director’s finding and indicated that an appellate brief would be submitted further expounding on the specific grounds for disputing the denial. The AAO received a supplemental statement on April 26, 2010, along with a letter from the petitioner’s Director/Chief Mechanic outlining the beneficiary’s duties with the petitioner.

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.

If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the entity that employed the alien overseas, the petitioner must establish that the alien was employed by the entity abroad for at least one year *in a managerial or executive capacity* in the three years preceding entry as a nonimmigrant. 8 C.F.R. § 204.5(j)(3)(i)(B). Unlike the nonimmigrant L-1 visa, this immigrant visa classification makes no provision for an alien who was employed abroad as a non-managerial L-1B “specialized knowledge” employee. *Cf.* 8 C.F.R. § 214.2(l)(3)(iv) (“the work in the United States need not be the same work which the alien performed abroad”).

The beneficiary entered the United States as an L-1A worker in June 2003 to work as the president and general manager for the United States subsidiary. In support of the Form I-140, the petitioner submitted a statement dated July 27, 2006 that listed the beneficiary's job responsibilities in his proposed employment with the petitioning entity. The director subsequently requested additional information about the proposed job duties and a percentage break-down for each duty. In response, the petitioner provided similar duties as previously submitted with a percentage break-down for each duty. In the director's decision, dated February 25, 2010, she noted that the duties listed are "so generalized and vague, they provide little evidentiary value." In addition, the percentages assigned for each duty totaled to more than 100 percent and the percentages overlapped for several duties. The percentages in the job description totaled to 460% which makes it impossible to determine how much time the beneficiary actually spent on each duty.

In addition, the director noted that the petitioner employed only two certified mechanics/technicians who were the beneficiary and one other employee. The director further noted that since the petitioner is engaged in "automotive repair and servicing" and only employed two mechanics, including the beneficiary, it appears that the beneficiary would be performing mechanical work for the petitioner.

On appeal, the petitioner reiterates the job description submitted previously and simply states that the director erred in concluding that the beneficiary will perform mechanical work. The petitioner states that it employs five personnel; however, the petitioner does not explain how the other employees will provide the services offered by the petitioner to run the business when none of the other employees are certified to provide mechanical repairs.

In addition, the petitioner provided the same job duties with a new breakdown of percentages of time spent on each duty to now total to 100 percent. The petitioner did not explain why the previous job percentages totaled to 460% when now it totals to 100%. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The director's denial decision also noted that the evidence submitted to establish a qualifying relationship between the petitioner and the employer abroad is conflicting. The director noted that the petitioner stated that it is owned 51% by [REDACTED] (the foreign employer) and 49% by [REDACTED] which is corroborated by the stock certificates submitted by the petitioner. However, the director also noted that the U.S. Corporation Income Tax Returns for 2005 and 2006 indicate that the beneficiary is the owner of 100% of the common stock of the corporation. On appeal, the petitioner simply states that "the petitioner's ownership is reflected by the presented stock certificates distribution, 49% owned by the beneficiary and 51% owned by [REDACTED]" The petitioner did not explain the inconsistent statements made on the federal tax forms and the stock certificates. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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).

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 met that burden.

**ORDER:** The appeal is dismissed.