

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

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



B4

DATE: JUL 13 2012

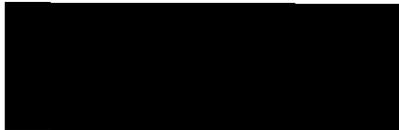
OFFICE: TEXAS SERVICE CENTER

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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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 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.

In support of the Form I-140 the petitioner submitted a statement dated February 17, 2011, which contained relevant information pertaining to the petitioner's eligibility, including an overview of the petitioner's business, the business of its foreign parent entity, and descriptions of the beneficiary's foreign and proposed employment. The petitioner also provided supporting evidence in the form of financial and corporate documents pertaining to the beneficiary's U.S. and foreign employers.

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 July 12, 2011 informing the petitioner of various evidentiary deficiencies, including a lack of evidence showing that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. The director instructed the petitioner to provide a definitive statement describing the beneficiary's proposed job duties. The petitioner was asked to list the beneficiary's specific job duties and to assign a time constraint showing the portion of time that would be allocated to each task. The petitioner was also asked to provide the job titles, job duties, and educational levels of the beneficiary's subordinates and to submit an organizational chart illustrating the petitioner's organizational hierarchy and the departments, teams, and employees that comprise that hierarchy.

The petitioner provided a responding statement dated August 8, 2011, which contains a description of the beneficiary's proposed employment as well as a list of the petitioner's employees and their respective job titles and job descriptions. The petitioner also provided the request organizational chart, which depicts the beneficiary's proposed position in relation to the other employees that comprise the staff of the U.S. 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 March 21, 2012 denying the petition. The director restated portions of the job description the petitioner provided in response to the RFE and found that the description was overly broad and generally lacked specific details about the beneficiary's daily activities.

On appeal, counsel submits a brief statement disputing the director's finding and asserting that the director improperly relied on the petitioner's small size in issuing the adverse decision. Although counsel indicated that a brief and/or additional evidence would be forthcoming after the filing of the Form I-290B, the record does not show that the record has been supplemented with any documents beyond the appeal form itself. The record is deemed complete as presently constituted.

The AAO finds that counsel's arguments are not persuasive and fail to overcome the director's denial. The discussion below will provide an analysis of the relevant documentation and will explain the underlying reasoning for the AAO's decision.

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.

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 also finds that it is appropriate and often necessary to consider other relevant factors, such as the petitioner's organizational hierarchy, which shows the complexity of a given entity and the beneficiary's placement in relation to other employees, as well as the petitioner's overall staffing, which allows the AAO to assess the extent to which the petitioner is able to relieve the beneficiary from having to focus the primary portion of his time on the performance of non-qualifying operational tasks.

The AAO finds that counsel's assertion that the director discriminated against the petitioner based on its small size is unfounded. Federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). The implication that the director should omit the petitioner's hierarchy and staffing from his analysis is not justified; only by considering this information in light of the description of the proposed employment can the director gain a comprehensive understanding of the managerial or executive capacity of a given position. Certainly, where an entity has limited staffing its ability to relieve the beneficiary from having to primarily perform non-qualifying tasks is less apparent than in the case of an entity with a large staff and multiple tiers of personnel. An eligible petitioner can establish eligibility, however, regardless of its size, by providing a detailed description of the beneficiary's job duties, supported by documentary evidence, and a comprehensive

explanation specifying how the beneficiary would be relieved from having to primarily perform non-qualifying tasks within the scope of the existing staffing and organizational hierarchy.

The record lacks a detailed description of the beneficiary's proposed employment. Despite the petitioner's submission of a supplemental job description in the response to the RFE, the petitioner failed to provide the requested information, i.e., a list of the beneficiary's specific job duties and the percentage of time that would be allocated to each individual task. Instead, the petitioner paraphrased the statutory provisions by broadly stating that the beneficiary would plan, develop, and establish corporate policies, goals, and objectives, oversee the company's activities, and make critical decisions regarding legal, financial, and personnel matters. Other than conveying a sense of the beneficiary's discretionary authority, which is inherent to any manager or executive at the top of an organization's staffing hierarchy, the petitioner failed to cite the beneficiary's specific daily tasks.

In general, it can be said that the goal of any president or manager of an entity is to make policy and direct operations. It stands to reason, however, that the specific tasks of an entity's president or general manager would vary, depending on the type of business the entity conducts and the particular organizational hierarchy of the entity in question. Here, the petitioner failed to explain what policies the beneficiary would formulate or what specific actions he would carry out in presiding over and managing operations within the scope of the petitioner's business of purchasing and selling cars and motorcycles and selling and repairing boats and yachts. Published case law clearly supports the pivotal role of a clearly defined job description, 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); *see also* 8 C.F.R. § 204.5(j)(5). Failing to adequately describe the proposed employment precludes the AAO from being able to determine whether the position in question is one that is within a managerial or executive capacity.

Additionally, the petitioner fails to explain how, with a limited organizational hierarchy comprised of five employees, the beneficiary would be relieved from having to allocate his time primarily to non-qualifying tasks while presiding over and managing the petitioner's various business interests. The AAO finds that the petitioner has failed to provide information sufficient to convey a meaningful understanding of the beneficiary's specific job duties within the scope of the petitioner's business operations. Therefore, the instant 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.