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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**



B4

[REDACTED]

DATE: **JUL 26 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 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, 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 chief executive officer. 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 September 11, 2009, which contained relevant information pertaining to the petitioner's eligibility, including an overview of the petitioner's business, the business of its foreign affiliate entity, and brief descriptions of the beneficiary's foreign and proposed employment. The petitioner also provided supporting evidence in the form of financial and business documents pertaining to both entities.

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 March 17, 2010 informing the petitioner of various evidentiary deficiencies. Among the director's concerns was the lack of a detailed job description pertaining to the beneficiary's proposed position with the U.S. entity. The director therefore instructed the petitioner to supplement the record with a detailed job description listing the beneficiary's specific daily tasks and the percentage of time the beneficiary would allocate to each activity.

The petitioner provided a response, which included a list of the beneficiary's responsibilities and their respective time allocations.

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 determined that the beneficiary's salary was not commensurate with that of a company CEO and further determined that the petitioner did not establish that the beneficiary oversees a subordinate staff of managerial, supervisory, or professional employees who would relieve the beneficiary from having to allocate his time primarily to the performance of non-qualifying tasks. Additionally, the director relied on the common law definition of the term "employee" in concluding that the petitioner and the beneficiary do not have an employer-employee relationship. The director issued a decision dated August 10, 2010 denying the instant petition.

On appeal, counsel submits a brief whose primary focus is to overcome the director's conclusion that the petitioner and the beneficiary do not have an employer-employee relationship. Although counsel generally disputes the finding that the beneficiary would not oversee a staff of professional, managerial, or supervisory personnel, there are no statements in the appellate brief or supporting documents explaining why the director's finding was incorrect or establishing that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

After reviewing the record in totality, the AAO finds that the director improperly relied on the beneficiary's salary as a relevant factor in determining the qualifying nature of the beneficiary's proposed employment. The AAO also finds that the record does not support the director's determination that the beneficiary would not oversee professional, managerial, or supervisory employees. Notwithstanding the director's analysis, the record indicates that counsel neglected to address a key eligibility issue—the managerial or executive

capacity of the beneficiary's proposed employment with the U.S. entity. The AAO finds that the petitioner has omitted relevant information that is necessary in order to determine whether the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

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 key issue to be addressed in this proceeding is the beneficiary's employment capacity in his proposed position with the petitioning U.S. entity.

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). Published case law supports the pivotal role of a clearly defined job description, determining 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); *see also* 8 C.F.R. § 204.5(j)(5).

The director expressly informed the petitioner that the job description previously provided in support of the petition was deficient and lacked relevant information regarding the beneficiary's daily job duties. Despite the director's specific request for a detailed account of the beneficiary's proposed tasks, the petitioner's response was overly vague in its reliance on broad terminology, which failed to specify the beneficiary's actual daily activities and instead focused on the beneficiary's discretionary authority and his elevated position within the petitioner's organizational hierarchy. While both of these factors are admittedly essential in order for the beneficiary to be deemed a multinational manager or executive, neither is an adequate substitute for a detailed description of the beneficiary's proposed job duties. USCIS cannot assume that the beneficiary would allocate his time primarily to qualifying managerial or executive tasks based on his placement within the petitioner's organizational hierarchy. A determination of the beneficiary's employment capacity is based in large part on the actual job duties that would be performed.

It is therefore necessary for the petitioner to convey a meaningful understanding of the proposed employment by actually specifying what tasks the beneficiary would routinely carry out within the scope of the hierarchy that the petitioner had in place as of the date the petition was filed. Assigning time constraints to the beneficiary's daily tasks further allows the AAO to gauge the proportion of time the beneficiary would spend performing qualifying tasks versus those that are not qualifying. The AAO acknowledges that no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks. The fact that the beneficiary may allocate less than half of his time to the performance of operational tasks is acceptable and would not preclude the beneficiary from meeting the statutory definition of managerial or executive capacity so long as the record shows that the non-qualifying tasks the beneficiary would perform are only incidental to the 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).

The petitioner relies on vague terminology and paraphrased portions of statutory language to describe the proposed employment. For instance, the petitioner indicated that the beneficiary would allocate 20% of his time to establishing and maintaining goals and policies. Although the petitioner attempted to elaborate on this broad statement, merely explaining that the beneficiary would ensure that the company maximizes its profits and "review policies across all departments" conveys virtually no information as to the actual underlying tasks that would be performed in connection with these broad business goals. The petitioner stated that 20% of the beneficiary's time would be allocated to exercising wide latitude in discretionary decision-making by having "an expansionary vision," targeting "a wider array of markets," and relying on "strategic initiatives" put forth by the company's managers. These statements are also vague and fail to point to any specific job duties that the beneficiary would routinely perform. The petitioner indicated that another 20% of the beneficiary's time would be spent expanding the petitioner's reach in order to meet sales goals, but the petitioner did not elaborate on this broad statement and did not explain what the beneficiary would do to reach more distributors and gain access to new markets.

The AAO finds that the petitioner failed to provide a comprehensive description of the beneficiary's proposed job duties. See 8 C.F.R. § 204.5(j)(5). The job description provided is simply too vague to allow for a conclusion as to what the beneficiary would do on a daily basis. Therefore, the AAO cannot conclude that the beneficiary would spend the primary portion of his time performing tasks within a qualifying managerial or executive capacity.

In light of the conclusion that the petitioner has failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity, there is no need to address the employer-employee issue, which the director cited as a second basis for the 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.