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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  
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Services

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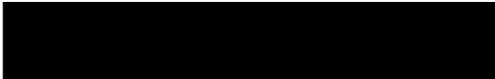
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DATE: OFFICE: TEXAS SERVICE CENTER

**MAR 02 2012**

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.<sup>1</sup> The appeal will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary as its executive. 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 from counsel in which counsel discussed the beneficiary's three primary job responsibilities. The petitioner also provided a number of supporting documents addressing the regulatory filing requirements described at 8 C.F.R. § 204.5(j)(3)(i).

The director reviewed the petitioner's submissions and determined that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to his entry to the United States as a nonimmigrant to work for the petitioning employer. 8 C.F.R. § 204.5(j)(3)(i)(B). The director also concluded that the petitioner failed to establish that the petitioner will have an employer-employee relationship with the beneficiary. The director therefore issued a decision dated August 18, 2009 denying the petition.

On appeal, counsel submits a brief dated September 3, 2009 in which he disputes both of the director's findings. Counsel asserts that the director failed to: (1) consider evidence the petitioner submitted and (2) specify why the submitted evidence was not sufficient. Counsel points out that the petitioner has previously approved L-1A petitions on behalf of the same beneficiary and contends that the director should have explained why the instant petition was being denied even though the prior L-1 petitions were approved. Counsel continues, asserting that the beneficiary is not required to, nor does he, primarily perform non-qualifying tasks, but rather claims that the beneficiary focuses on using his business skills and knowledge to expand the businesses acquired in the United States.

The AAO notes that all of the petitioner's submissions have been reviewed. All relevant documentation that pertains directly to the key issues 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

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<sup>1</sup> The record shows that the petitioner previously filed another Form I-140 petition with receipt number [REDACTED]. That petition was denied and the petitioner's appeal from that denial was dismissed by the AAO on April 2, 2009.

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 position with the foreign entity. Specifically, the AAO will examine the record to determine 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.

As a preliminary matter, the AAO will address counsel's contention that the director should have explained why the instant petition was denied after the petitioner's L-1A petitions, which were filed on behalf of the same beneficiary, were approved. First and foremost, it is crucial to understand that each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude U.S. Citizenship and Immigration Services (USCIS) from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

The AAO also finds that counsel's reliance on the Adjudicator's Field Manual (AFM) is misplaced, as this document is an internal tool that is intended for use by USCIS employees in the course of their reviews of petitioners' respective records. The AFM is not a substitute for statutory or regulatory provisions nor does it have the effect of binding case law precedent. It is noted that 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)). Furthermore, this AFM provision relates to nonimmigrant extension petitions, not immigrant visa petitions.

Next, while counsel's preference for a detailed denial, which itemizes specifically the record's deficiencies, is reasonable, the director's only legal obligation in issuing a denial is to specify why the petition is being denied. In the present matter, the director made the grounds for denial abundantly clear, informing the petitioner that one of the grounds for denial was the petitioner's failure to provide sufficient evidence to establish that it meets the provisions of 8 C.F.R. § 204.5(j)(3)(i)(B), which, as previously noted, deals with the beneficiary's employment abroad.

In its comprehensive review of the record, the AAO observes that neither of counsel's statements nor the petitioner's supporting documents specifically addressed the beneficiary's position with the foreign entity such that the director would have been able to determine whether the beneficiary was employed abroad within a qualifying managerial or executive capacity. Although counsel cites the provisions of the regulatory requirement pertaining to the beneficiary's employment abroad, he made only general statements with regard to such employment, asserting that the beneficiary's effective implementation of "good business practices and management staffing" led to the foreign entity's financial success. Rather than provide information about the beneficiary's specific job duties during his employment abroad, counsel merely referred to documentation

that was provided earlier in support of a previously filed Form I-140. A review of the documentation shows that the previously provided evidence includes a statement dated August 15, 2006 from the petitioner's prior counsel who also failed to provide any details regarding the foreign employment. Instead, the prior counsel stated that the beneficiary "already proved and established his executive capacity at Florida Pub in his previous submissions to the Service."

Although the petitioner provided documents pertaining to the foreign entity, including licensing and registration certificates, an updated leasing agreement, 2007 evidence of employees, tax returns, and financial statements, none of these documents specifically address the beneficiary's job duties with the foreign entity. As has been established in a published decision, the beneficiary's 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 the petitioner has failed to provide relevant probative documentation pertaining to the beneficiary's job duties with the foreign entity, the AAO cannot conclude that the beneficiary was employed abroad within a qualifying managerial or executive capacity and on the basis of this finding the instant petition cannot be approved.

As the petitioner has failed to establish that it meets the eligibility requirement cited at 8 C.F.R. § 204.5(j)(3)(i)(B), the second ground for denial—the employer-employee relationship between the petitioner and the beneficiary—need not be addressed at this time.

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.