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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

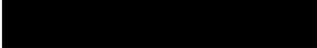


B4

DATE: **MAR 19 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:

SELF-REPRESENTED

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 company that is engaged in "management, operations-retail," and it seeks to employ the beneficiary as its Vice President. 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.

On March 15, 2010, the director denied the petition based on the determination that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

On appeal, the petitioner states that the proposed duties of the beneficiary qualify under the regulations as managerial or executive. The petitioner also states that the beneficiary will manage two managers and the beneficiary "will be responsible for supervising the duties and will not directly perform any duties." The petitioner submits the beneficiary's job description which is identical to the documentation previously submitted.

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 issue raised by the director in this proceeding is 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 response to the director's request for evidence, the petitioner explained that the beneficiary will spend 50% of her time as a Retail Executive and 50% of her time in NRI (Non Resident Indian) – Investment portfolio. More specifically, the petitioner explained the beneficiary's proposed duties as follows:

Beneficiary will be directing the management of planning and development, operations, and administering the overall retail operations of the company and the NRI Investment unit in India.

This unit operates in India during US business hours as it caters to NRIs residents in US. Beneficiary will perform unique work of exceptional difficulty and responsibility with very wide latitude for exercising independent judgment. Beneficiary will serve as a recognized authority, principal advisor, and program representative of [the petitioner's] operations including the procurement of new businesses, franchise negotiations, vendor selections, finance and loan management and other related functions to ensure the smooth operations and growth of the corporation. Beneficiary will apply and implement new technology to fulfill business requirements and develop policy.

The beneficiary will have executive and decision making authority for the operations of the US company and the NRI unit. She will establish goals and policies for retail strategy and strategy for NRI investment in India. The beneficiary will exercise latitude authority to set, direct, evaluate, and determine the critical aspects of long-range plans, goals, and objectives; budgetary and staffing needs; and solutions of the efficient management.

The petitioner stated that the beneficiary will be "responsible for handling all the vendors/suppliers to meet the needs and demands of the customers." The petitioner also provided several examples of the types of investments that can be made in India. The petitioner provided an outline of the process of investing in India and how the "investment counselor" will assist an individual in the investment process. As noted above, the beneficiary will spend half her time providing investment counseling to clients and the other half of her time in retail strategy for the petitioner which is a gasoline station and convenience store.

The petitioner submitted an organizational chart of the U.S. company. The company has two departments, the accounts department and the sales and purchase department. The beneficiary will oversee a manager and an accountant in the accounts department. The beneficiary will also

oversee the sales and purchase manager, an assistant manager, a merchandiser, and two sales associates in the sales and purchase department. In addition, the petitioner provided a brief description of the job duties performed by the beneficiary's subordinates. The petitioner also submitted photographs of the petitioner which is a gasoline station and convenience store. The store has one small office with a desk and two chairs.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. When 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 petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states vague duties such as the beneficiary will be responsible for "directing the management of planning and development, operations, and administering the overall retail operations and the company and the NRI Investment unit in India." The petitioner did not, however, define the petitioner's goals and policies. Although the petitioner stated that the beneficiary will spend 50% of her time managing the NRI Investment Portfolio, there is no evidence in the record to corroborate the claim that the beneficiary will spend half of her time on this type of business. The petitioner did not provide a letter from the foreign company indicating that the beneficiary will work with the foreign company to establish investments in India. Furthermore, the petitioner did not provide any evidence of clients the petitioner already has for the investment counseling aspect of her duties. Finally, the petitioner is a small gasoline station and convenience store with a small office and it is unclear how the beneficiary will work on investment opportunities with clients if she has no office space to meet with them, and will work in the office that is needed to run the operations of the gasoline station and convenience store. The record lacks any evidence, except for the assertions of the petitioner, that the beneficiary will be working 50 percent of her time in providing investment opportunities to Non Resident Indians who wish to invest in India. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

The job description also includes several non-qualifying duties such as "managing and making key decisions about stock control," "strategize analysis of sales figures and forecasting future sales volumes to maximize profits," and "responsible for handling all the vendors/suppliers to meet the needs and demands of the customers." It appears that the beneficiary will be developing and marketing the services of the business rather than directing such activities through subordinate employees. 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 Intn'l.*, 19 I&N Dec. at 604.

The petitioner provided an organizational chart that indicated a sales and purchase manager, an assistant manager, an accounts manager and an accountant. It is not clear why a small gasoline station and convenience store would require a president, a vice president, a sales and purchase manager, an assistant manager, an accounts manager, and an accountant. In addition, the petitioner provided the employer's quarterly wage reports that stated the petitioner employed seven individuals at the time the petition was filed but the individuals were not listed by name and their salaries were also not listed. There is no evidence on record that the individuals listed in the organizational chart are in fact employed and whether they fill part-time or full-time positions. In addition, the petitioner submitted the employer's quarterly wage reports for each quarter of 2008 and 2009. In all of 2008 and for most of 2009, the petitioner employed two or three people. The petitioner did not explain why in the third quarter of 2009, the quarter in which the current petition was filed, it decided to employ four additional employees. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the vague job description submitted with the petition, the director reasonably concluded that the petitioner has failed to demonstrate that the beneficiary would be primarily performing managerial or executive duties in his proposed position.

The record indicates that at the time of filing, a preponderance of the beneficiary's duties would have been to directly provide the services of the business, regardless of whether such services were qualifying or not. While the AAO acknowledges that no beneficiary is required to allocate 100% of her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to 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). In the present matter, the evidence furnished strongly indicates that the beneficiary would not be employed in a primarily managerial or executive capacity. For this reason, the petition may not 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 met that burden.

**ORDER:** The appeal is dismissed.