

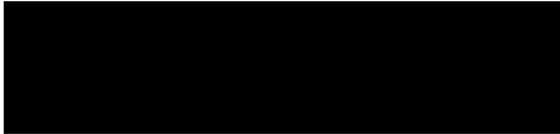
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



BA

DATE: **MAY 23 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion 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 any motion to 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. 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 May 15, 2009, in which the petitioner briefly described the nature of its relationship with the beneficiary's foreign employer—that of parent-subsidary—and provided a brief description of the beneficiary's proposed employment.

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 December 2, 2009 followed by a notice of intent to deny (NOID) dated March 3, 2010, informing the petitioner of various evidentiary deficiencies. In the RFE the director instructed the petitioner to provide a more definitive statement of the proposed employment, listing the specific job duties the beneficiary would perform as well as the unit of time that would be allotted to the performance of each task. The petitioner was also asked to discuss the beneficiary's subordinates in terms of their respective job duties and educational levels and to provide an organizational chart illustrating the petitioner's organizational structure by listing all departments, teams, and employees that comprise the petitioning entity. With regard to the beneficiary's employment abroad, the director asked the petitioner to provide the foreign entity's organizational chart that corresponds with the beneficiary's employment. The petitioner was asked to include the departments and employees along with employee job titles and job descriptions.

In response, the petitioner provided a letter dated December 15, 2009, which included job descriptions for the beneficiary and his subordinate employees. The petitioner also provided organizational charts for the U.S. and foreign entities as well as job descriptions for the beneficiary and his subordinates during his employment with the foreign entity.

After reviewing the petitioner's submissions, the director determined that there remained sufficient grounds for denial. The director therefore issue a NOID in which he determined that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity. The director instructed the petitioner to provide evidence to overcome these adverse findings.

The petitioner's response included a letter dated March 26, 2010 in which the petitioner provided information about the beneficiary's employment with the foreign entity. The petitioner's letter was accompanied by supporting documents pertaining to the foreign and U.S. entities. With regard to the foreign entity, the petitioner provided translated pay stubs showing the beneficiary's employment abroad and a translated document from the chamber of commerce identifying the beneficiary as the foreign entity's manager. With regard to the U.S. entity, the petitioner provided state-issued documents attesting to the petitioner's corporate existence, the petitioner's tax returns for 2006, 2007, and 2008, the petitioner's tax documents, and service invoices showing that the petitioner was doing business prior to filing the petition.

After reviewing the record, the director concluded that the petitioner failed to establish to overcome the deficiencies cited in the RFE and the NOID and therefore issued a decision dated June 7, 2010 denying the petition. The director found that the petitioner submitted a deficient description of the proposed employment, failing to establish that the beneficiary would oversee the work of professional or managerial subordinates. The director also found that the petitioner failed to list any managerial duties as part of the beneficiary's foreign employment. The director deemed the foreign chamber of commerce document, which referred to the beneficiary as manager of the foreign entity, as insufficient to establish that the beneficiary was employed in a qualifying capacity.

On appeal, the petitioner submits a brief disputing the denial. The petitioner relies on the foreign chamber of commerce document as evidence of the beneficiary's foreign employment in a qualifying capacity. The petitioner stresses the beneficiary's discretionary authority over business matters and managerial subordinate employees and further asserts that the beneficiary managed the organization's essential functions. The petitioner asserts that neither the size of the foreign entity nor the number of managers under the beneficiary's supervision should determine whether the beneficiary was employed abroad in a qualifying managerial or executive capacity.

With regard to the beneficiary's proposed employment with the U.S. entity, the petitioner asserts that the beneficiary directs and coordinates activities of all departments. The petitioner restates the job responsibilities that were previously provided to describe the beneficiary's proposed employment and states that the beneficiary establishes policies and guidelines for existing managers and seeks to establish new departments to ensure growth the company's growth.

The AAO finds that the statements offered on appeal are not persuasive and fail to overcome the director's denial. It is noted that all of the petitioner's submissions have been reviewed. All relevant documentation that pertains directly to the key issue 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 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.

As noted above, the two primary issues to be addressed in this proceeding pertain to the beneficiary's foreign and proposed employment. Specifically, the AAO will examine the record to determine whether the petitioner submitted sufficient evidence to establish that the beneficiary was employed abroad and that he would be employed 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.

As a preliminary matter, the AAO notes that in order to fully examine the beneficiary's executive or managerial capacity in a given position, the AAO will first look to the description of the job duties pertaining to the position(s) in question. *See* 8 C.F.R. § 204.5(j)(5). The AAO will also consider other relevant factors, including a given entity's organizational hierarchy, the beneficiary's position therein, and the availability of qualified support personnel in order to determine whether the entity has the capacity to relieve the beneficiary from having to primarily perform the daily operational tasks.

The AAO finds that the petitioner offered job descriptions that did not effectively convey a meaningful understanding of the specific tasks the beneficiary performed abroad and would perform on a daily basis within the scope of the organizational hierarchies of the two positions in question. Rather, the petitioner provided general information pertaining primarily to the beneficiary's discretionary authority; little information was provided to describe the actual daily tasks the beneficiary performed or would perform. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Although the beneficiary's discretionary authority is one key aspect to establishing his managerial or executive capacity both abroad and in the proposed position, the petitioner must establish that the positions in question are comprised primarily of qualifying managerial- or executive-level tasks.

In describing the beneficiary's position abroad, the petitioner indicated that the beneficiary designed strategic plans, directed the management of the organization, established goals and policies, monitored the organization's finances, made discretionary decisions, and reported only to the board of directors. This job description fails to state any of the beneficiary's actual daily tasks to clarify how these broad job responsibilities were carried out. Merely establishing that the beneficiary was responsible for overall management of the foreign entity does not indicate that he was precluded from performing certain operational tasks in his daily environment. While the AAO acknowledges that no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks in order to qualify for the classification sought herein, the petitioner must establish that the non-qualifying tasks the beneficiary performed or would perform are only incidental to the position in question. 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 fact that a beneficiary has discretionary decision-making authority and oversees other personnel does not establish that the primary portion of his time was allocated to the performance of qualifying managerial or executive tasks.

Similarly, with regard to the beneficiary's proposed employment, the job description provided in response to the RFE is overly broad consisting primarily of vague job responsibilities rather than specific job duties. It is unclear what specific tasks fall under the general responsibility of analyzing operations to evaluate performance of staff, as the petitioner provided no information to explain what specific tasks the beneficiary would carry out on a daily basis to complete the evaluation process. Similarly, the petitioner has failed to clarify what is meant by coordinating the development and implementation of budgetary control or directing and coordinating financial budget activities. The petitioner has not shown how these broad job

responsibilities translate into daily tasks. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner also failed to specify how implementing corrective actions to solve departmental problems or preparing and presenting various reports can be deemed managerial or executive job duties, as both sets of duties, without further explanation, are indicative of daily operational tasks.

The director's RFE expressly instructed the petitioner to not only list the beneficiary's specific job duties, but also to qualify those duties with a unit of time to establish how much of the beneficiary's time would be allocated to qualifying tasks versus those that are non-qualifying. As noted above, while devoting a small portion of his time would not prevent the beneficiary from meeting the statutory definition of managerial or executive capacity, a favorable conclusion cannot be reached on the basis of the deficient information that the petitioner has provided. Accordingly, the AAO finds that the petition does not warrant approval and the director's decision will be affirmed.

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.