



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

B4

DATE: OFFICE: NEBRASKA SERVICE CENTER [REDACTED]

NOV 15 2012

IN RE: [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 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 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 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,

✓ Ron Rosenberg  
Acting 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 engaged in the distribution and trade of dairy products, and it 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.

The director denied the petition on August 16, 2011, determining the following grounds of ineligibility: (1) the petitioner failed to establish that the beneficiary's employment abroad was within a qualifying managerial or executive capacity; and, (2) the petitioner failed to establish that the beneficiary's proposed employment with the U.S. entity would be within 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 two issues that will be addressed in this proceeding call for an analysis of the beneficiary's job duties. Specifically, the AAO will examine the record to determine whether the petitioner submitted

sufficient evidence to establish that the beneficiary was employed abroad and 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.

In examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). 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). That being said, however, USCIS reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the petitioner's business, the employment and remuneration of employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In the present matter, an analysis of the record does not lead to an affirmative conclusion that the beneficiary was employed abroad or would be employed in the United States in a qualifying managerial or executive capacity.

With regard to the foreign position held by the beneficiary, the petitioner provided a vague and general job description such as the beneficiary was responsible for "supervising and monitoring corporate governance including risk management and analysis, and compliance with applicable legal and regulatory requirements;" "managing the public image of [the foreign company];" "ensuring compliance with the documentation of policies and procedures;" and, "developing and revising the strategic and visionary plans for [the foreign company]." It is unclear which specific tasks actually fell within these broad categories and whether the supervisory tasks the beneficiary performed were of a qualifying nature. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The petitioner's vague and general description of the beneficiary's position does not identify the actual duties performed, such that they could be classified as managerial or executive in nature.

The job description also includes several non-qualifying duties such as the beneficiary was responsible for the "management of the company's financials including profitability, cash flow, financial targets, and financial growth;" "generating additional business opportunities for [the foreign company] by networking with industry contacts;" "negotiating and approving contracts and agreements with suppliers, distributors, federal agencies, and state agencies;" "managing and directing supply chain issues;" "researching and analyzing industry trends and initiating appropriate strategies based on that research and analysis;" "directed the research regarding potential buyers in South Korea;" "establishing budgets and business growth;" and, "managing budgetary controls." As indicated in the organizational chart, the beneficiary supervised the director of sales and marketing and the director of documents and administration. The petitioner does not provide evidence that the petitioner employed individuals to assist with the finances, budgeting, bookkeeping, and importing and exporting operations and, thus, it appears that the beneficiary was performing the duties inherent

in operating the business such as finances, customer service, negotiations, contracts, and importing and exporting operations.

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 petitioner has failed to establish that the beneficiary was employed abroad in a qualifying capacity.

In addition, the petitioner has not established that it would employ the beneficiary in a managerial or executive capacity. In response to the request for evidence, dated March 30, 2011, the petitioner stated that the beneficiary's "duties and responsibilities will be almost identical to the duties she performed as CEO of the parent company in Canada." The petitioner goes on to repeat the duties presented for the beneficiary's position abroad as outlined above. Thus, as the beneficiary will be responsible for the financial operations, negotiation of contracts, business development, importing and exporting operations, and budgeting, the petitioner has failed to establish that the the beneficiary is relieved from performing the duties inherent in operating the business, rather than performing primarily qualifying duties.

The petitioner submitted an organizational chart of employees supervised by the beneficiary and a brief description of their job duties. According to the chart, the beneficiary supervises a general manager, a director of sales and marketing, a director of logistics and documentation and a logistics specialist. However, in reviewing the Forms 941, Employer's Quarterly Federal Tax Return, for 2010, it appears that the petitioner did not employ the logistics specialist at the time of filing and employs the director of logistics and documentation on a part-time basis. Thus, the full-time employees supervised by the beneficiary are the general manager and the director of sales and marketing. In reviewing the brief job description provided for the subordinate staff, it appears that the beneficiary will be responsible for budgeting, negotiation and contracts, and for arranging the delivery of products for the import and export operations. As discussed above, the petitioner has not identified employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business. For this additional reason, the appeal will be dismissed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for 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.