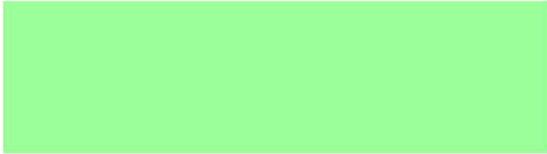




U.S. Citizenship  
and Immigration  
Services

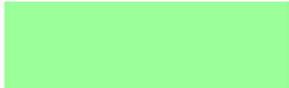
(b)(6)



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**JUN 12 2013**

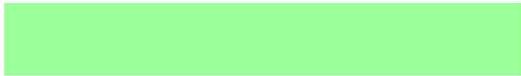
OFFICE: TEXAS SERVICE CENTER



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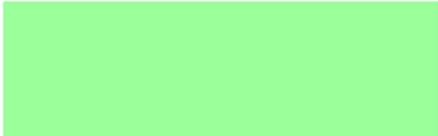
Petitioner:

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 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,

Ron Rosenberg  
Acting 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 Texas corporation that seeks to employ the beneficiary in the United States as its operation manager. 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 briefly addressing the petitioner's qualifying relationship with the beneficiary's foreign employer as well as the beneficiary's proposed and foreign employment. The petitioner also provided evidence in the form of corporate, financial, and business documents.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for evidence (RFE) dated June 20, 2012 informing the petitioner of various evidentiary deficiencies. One of the issues addressed in the RFE was that of the beneficiary's employment capacity in his proposed position with the U.S. entity. Specifically, the director instructed the petitioner to provide a more detailed job description pertaining to the beneficiary's proposed employment as well as a list of job duties and educational levels of the beneficiary's direct subordinates, including those working as contractors. The petitioner was also asked to provide IRS Form W-2 wage and tax statements for 2011 for each employee as well as evidence showing wages paid to contractors.

In response, the petitioner provided a statement dated September 7, 2012 stating that the beneficiary was "promoted to manage" the petitioning entity in the position of general manager after he successfully completed approximately three years of employment with the foreign entity in the position of operational manager. The petitioner listed 17 key characteristics of the general manager position, claiming that the three traffic clerks, who are the beneficiary's subordinates, are professional employees with experience in international trade and Mexican customs law. The petitioner indicated that two of the traffic clerk employees possessed degrees in private accounting and one possessed a baccalaureate degree in business administration. The petitioner stated that the warehouse supervisor, who is also a subordinate of the beneficiary, is a contracted employee. The petitioner provided job descriptions for all four subordinate employees as well as an organizational chart, which shows that in addition to three traffic clerks and a warehouse supervisor the beneficiary also oversees a customer service and traffic clerk assistant. Lastly, the petitioner complied with the director's request for 2011 W-2s and evidence of wages paid to contracted labor hired through [REDACTED]. Additionally, the petitioner provided a copy of its quarterly wage report for the first quarter of 2012. The latter document listed a total of six employees.

Although the record contains an organizational chart depicting the petitioner's staffing hierarchy, this document is undated and thus it is unclear whether the information contained therein was intended to describe the petitioner's organization at the time the petition was filed or whether it was intended to describe the petitioner's organization as constituted at the time of its RFE response.

After reviewing the record, the director determined that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. The director pointed to an inconsistency between the supporting statement submitted by the petitioner's attorney, who indicated that the beneficiary would be employed in the position of general manager, and the beneficiary's résumé, which identified the beneficiary's

current position with the petitioning entity as that of "office and operations manager." The director also determined that the petitioner provided a job description that lacks sufficient detail about the beneficiary's actual daily tasks, noting that merely indicating that the beneficiary exercises discretionary decision-making is not an adequate representation of an actual daily task. The director pointed to various items in the beneficiary's job description which he deemed as non-qualifying tasks and further found that the petitioner's organizational chart shows a lack of organizational complexity, indicating that the petitioner does not have the human resources to relieve the beneficiary from having to perform non-qualifying tasks. In light of these adverse findings, the director issued a decision dated October 3, 2012 denying the petition.

On appeal, counsel disputes the adverse decision and provides a statement dated November 28, 2012 from Jesus Verduzco, the petitioner's president, who addresses the beneficiary's qualifications and the proposed position with the U.S. entity.

Based on a comprehensive analysis of the record, including the petitioner's earlier submissions as well as Mr. Verduzco's statement on appeal, the AAO finds that the petitioner has not established that the beneficiary's employment with the U.S. entity would be primarily in a qualifying managerial or executive capacity. The AAO therefore finds that the petition was properly denied.

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.

(b)(6)

As indicated above, the primary issue to be addressed in this decision is the beneficiary's proposed employment with the U.S. entity and whether the petitioner provided sufficient evidence to establish that the beneficiary 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 general, when examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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 AAO will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees,

the nature of the business conducted by the entity in question, the size of the subordinate staff, and any other facts that contribute to a comprehensive understanding of the beneficiary's actual role in an organization.

The director had a number of valid reservations with regard to the beneficiary's role with the U.S. petitioner. As indicated above, the director properly focused on the beneficiary's job description and whether sufficient information was provided to convey a meaningful understanding of the beneficiary's tasks. The director also properly questioned what the beneficiary's proposed position would actually be—that of an office and operations manager, as indicated in the beneficiary's résumé, or that of general manager, as claimed by counsel.

Turning first to the matter of the beneficiary's job description, the AAO agrees with the director's finding that several items in the job description that was offered in response to the RFE were overly broad and placed undue focus on the beneficiary's heightened level of discretionary authority rather than the tasks he would actually perform on a regular, even if not on a daily, basis. The beneficiary's daily tasks are not clarified by general statements indicating that the beneficiary would make discretionary decisions, manage and support the components of the organization, direct subordinate employees, and have the authority to hire and fire personnel. These general statements can be applied to any employee at the top of any organization, regardless of a company's level of organizational complexity or the nature of the employee's job duties.

In order to establish that a beneficiary warrants classification as a multinational manager or executive the petitioner must do more than merely provide general statements; the petitioner must provide enough detailed information about the beneficiary's proposed tasks to allow USCIS to gain a meaningful understanding of what specific job duties the beneficiary would carry out on a daily basis and what the beneficiary's role would be with respect to other employees within the petitioner's organization at the time the petition was filed. That being said, the petitioner listed a number of job duties which were specific enough but ones the AAO deems as non-qualifying operational tasks, including negotiating quotes and rates with clients and suppliers, engaging in debt collection, designing each client's business model, advising clients and personnel on matters dealing with trade regulations, attending customs meetings, and meeting with clients and suppliers.

Looking to the statement provided by [REDACTED] on appeal, the AAO finds that none of the information therein supports a basis for departing from the AAO's analysis above. [REDACTED] reiterates much of the information that was previously provided and stresses the beneficiary's discretionary authority over the petitioner's employees and business operation and points to the level of expertise the beneficiary's subordinates must maintain in order to carry out their job duties. The AAO finds that this information is not sufficient to establish that the nature of the tasks the beneficiary would primarily perform would be within a qualifying managerial or executive capacity. While the AAO acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform would only be 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). As previously stated, the petitioner has not provided sufficient evidence to establish that the beneficiary's proposed employment would primarily involve tasks of a qualifying nature.

Lastly, the AAO will briefly address the beneficiary's employment with the foreign entity. Despite the director's favorable conclusion that the beneficiary was employed abroad in a qualifying managerial or executive capacity, the AAO finds that the record does not support that finding. Looking to the beneficiary's job description as provided in the letter dated August 28, 2012, the AAO finds that the percentage breakdown contains similar deficiencies as those found to exist in the job description concerning the petitioner's proposed employment.

First, the AAO points to the vague assertion claiming that the beneficiary would make decisions regarding traffic personnel including assigning their job duties and overseeing their work. Other than assigning job duties, it is unclear what specific tasks were included in the beneficiary's supervisory oversight. The AAO similarly finds that serving as an advisor on trade regulations, designing clients' business models, negotiating rates with suppliers and clients, attending meetings with clients, providing customer support, and preparing reports for the company's director are not tasks of a qualifying managerial or executive nature. The AAO similarly focused on these same tasks, which are also part of the beneficiary's proposed position with the U.S. entity, finding that they were not indicative of tasks that would be performed by an employee within a qualifying managerial or executive capacity. The AAO does not find that the record sufficiently distinguishes between the beneficiary's proposed position, which both the AAO and the director found to be lacking in managerial or executive characteristics, and the employment abroad, which except for the position title, embodies many of the same characteristics that are common to the beneficiary's proposed position.

Applying the reasoning used to analyze the information that pertains to the beneficiary's proposed employment with the U.S. entity to the information provided with regard to the beneficiary's employment abroad, the AAO finds that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity and the director's affirmative determination to the contrary will be withdrawn.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional ground of ineligibility discussed above, this petition cannot be approved.

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.