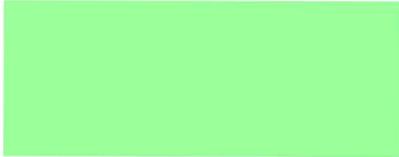


(b)(6)

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

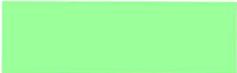


U.S. Citizenship
and Immigration
Services



DATE: **MAR 05 2013**

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:

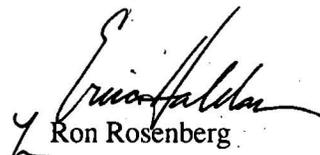
SELF-REPRESENTED

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 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

(b)(6)

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 engaged in "equipment leasing, logistics and business support, procurement and supply and import, export of goods." It seeks to employ the beneficiary as its Executive Director. 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 March 28, 2012, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity.

On appeal, the petitioner asserts that the denial of the petition was based on an erroneous conclusion of fact on the part of the director.

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 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 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 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 beneficiary's U.S. position, the petitioner provided a vague and general job description such as the beneficiary will, "formulate the policies, goals and objectives of the US entity to support the foreign entity's global objectives;" act as "signatory to Bank Accounts and authorizing financial instruments to settle financial obligation there-of"; and report "to only the Group Chairman/CEO and the Board of Directors." It is unclear what types of specific tasks actually fall within these broad categories and whether the supervisory tasks the beneficiary is claimed to perform are 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 will "plan and control the function of procurement of automobiles and equipment in US for export to Nigeria"; "authorize the payment for goods and services, execute purchase contracts in the United States and make necessary arrangement to ship consignment to the foreign entity in Nigeria"; "execute documents to be filed with the Commonwealth of Massachusetts, IRS, DUA, Social Security, etc."; and, "acknowledge, deliver and record any recordable instrument affecting the entity's interest in real property." The petitioner does not provide sufficient evidence that the petitioner employs individuals to assist with the budgeting, bookkeeping, and importing and exporting operations and, thus, it appears that the beneficiary is performing the duties inherent in operating a business such as finances,

customer service, negotiations, contracts, and importing and exporting operations. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 petitioner submitted an organizational chart depicting employees supervised by the beneficiary and a brief description of their job duties. As indicated in the organizational chart, the beneficiary will supervise an Administrative Officer and a Logistics Officer. However, it is not clear if these individuals are full-time employees or even part-time employees. According to the IRS Form 1120, U.S. Corporation Income Tax Return, for 2011, the petitioner paid \$10,260.00 in salaries and wages, not including the beneficiary. Thus, it appears that the logistics officer and the administrative officer work limited hours throughout the year. The petitioner did not provide an IRS Form W-2 or Form 1099 to indicate the hours worked by each of these individuals. Thus, it is not clear who will handle the duties that are performed by the administrative officer and logistics officer when they are not working with the petitioner, such as scheduling shipments, inventory management, quality assurance and control, delivery of automobiles to the ship yard, maintaining records, scheduled appointments, schedule bills and invoices, bookkeeping and account reconciliation and filing documents.

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. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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).

The petitioner also explained that it outsources the tax and accounting services, payroll, foreign forwarding/shipping services and auto procurement and delivery services. The petitioner provided letters from the contractors explaining that they have done business or are doing business with the petitioner. However, the petitioner did not provide the contracts with these employees to confirm the hours and amount of work performed by the contract employees. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

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 would be employed in a qualifying capacity.

On appeal, the petitioner does not provide any evidence to overcome the director's finding that the beneficiary's proposed would not be within a qualifying managerial or executive capacity. Instead, the petitioner focuses on one statement made by the director in his decision. Specifically, the director noted that the petitioner provided affidavits from neighbors to establish that the beneficiary's residential dwelling is used to operate the business. The director noted that "upon contacting said neighbors, additional statements made to this office by them revealed that they regularly see the beneficiary picking up the cars and cleaning cars on a regular basis."

On appeal, the petitioner provides the following information regarding this issue:

The beneficiary occasionally (not regularly) may be seen outside with cars in company of the contractor and/or staff inspecting the cars to ensure conformity with parent company request and make necessary report to the parent company in Nigeria in line with internal control procedures of the group. Any information received by USCIS to suggest that the beneficiary is seen picking up the cars and/or cleaning the cars on a regular basis is erroneous and misleading; therefore should be disregarded.

The AAO notes that even if it disregards the director's comments regarding statements made by the affiants, the petitioner has not met its burden to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director's decision was also based, in part, on the petitioner's failure to provide a detailed description of the beneficiary's actual duties and its failure to establish how the petitioner's limited number of employees and claimed contractors relieve the beneficiary from being primarily engaged in non-qualifying duties. As discussed above, the AAO concurs with these findings, and the petitioner has not offered any additional evidence on appeal pertaining to the beneficiary's actual duties.

Accordingly, the record does not establish that the petitioner will employ the beneficiary in a qualifying managerial or executive capacity and the appeal will be dismissed.

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.