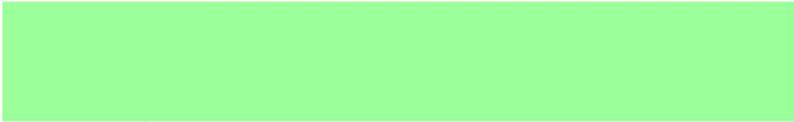




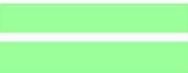
**U.S. Citizenship
and Immigration
Services**

(b)(6)



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OFFICE: TEXAS SERVICE CENTER

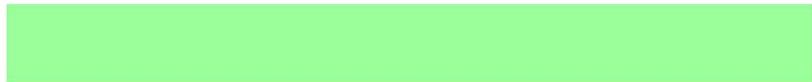
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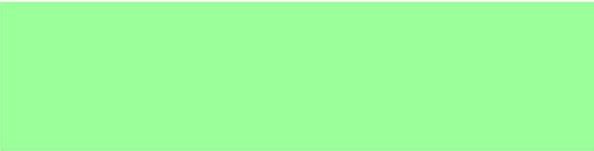
Petitioner:

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 Florida entity that seeks to employ the beneficiary in the United States as its general manager and CEO. 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 2, 2011, which contained information pertaining, in part, to the beneficiary's employment abroad and with the petitioning entity as well as his proposed employment with the U.S. entity. The petitioner also provided evidence in the form of corporate, business, and financial documents pertaining to both entities.

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 November 14, 2011 informing the petitioner that the record lacked sufficient evidence to establish the following: 1) the beneficiary's qualifying employment abroad in a managerial or executive capacity; 2) the beneficiary's proposed employment in the United States in a qualifying capacity; 3) the petitioner's business activity in the United States for one year prior to filing the Form I-140; and 4) the petitioner's ability to pay the beneficiary's proffered wage as of the date the petition was filed. With regard to the issues of qualifying employment abroad and in the United States, the director instructed the petitioner to provide more detailed job descriptions pertaining to the beneficiary's foreign and proposed positions listing the beneficiary's specific daily job duties and the specific percentage of time that the beneficiary allocated and would allocate to each of his assigned tasks. The petitioner was also asked to provide each entity's organizational chart depicting the employees in each entity as well as their respective job titles, job duties, educational levels, and their full- or part-time statuses.

The petitioner complied with the director's request supplementing the record with additional documentation addressing the director's concerns.

The director reviewed the statements used to describe the beneficiary's foreign and proposed employment and determined that such statements are deficient in numerous ways. The director found that the descriptions were overly broad and failed to convey an understanding of the actual daily tasks that comprised the beneficiary's employment abroad and those that would comprise his proposed employment in the United States. The director also found that the job descriptions contained elements of both managerial and executive capacity, thus indicating that the beneficiary's positions are hybrid positions. In addition to the adverse findings regarding the beneficiary's employment capacity in his foreign and proposed positions, the director also concluded that the documentation on record failed to establish that the petitioner was doing business as of May 2010 or that it had the ability to compensate the beneficiary the proffered wage of \$60,000 annually. The director therefore issued a decision dated March 14, 2012 relying on each of the above four adverse findings as independent grounds for denial.

On appeal, counsel for the petitioner disputes all four grounds for denial and offers additional evidence in support of his statements.

After considering the appellate brief and supporting evidence, the AAO finds that the petitioner has provided sufficient documentation to overcome the adverse findings concerning the petitioner's inability to meet the

regulatory provisions regarding the time period the petitioner spent doing business prior to filing the petition and the petitioner's ability to pay the beneficiary's proffered wage.

Notwithstanding the withdrawal of two of the director's adverse conclusions on appeal, the AAO nevertheless concurs with the director's adverse findings with regard to the beneficiary's employment capacity in his foreign position and his proposed position with the U.S. entity. The discussion below will address the two issues that remain in this matter.

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.

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.

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 entities in question, the size of the respective subordinate staffs, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role in the businesses of the two respective entities.

The AAO finds that the director failed to adequately address the significant shortfalls in the job descriptions the petitioner offered in response to the RFE. As a threshold matter, the AAO first notes that a beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive capacity and the statutory definition for managerial capacity. In looking to the petitioner's original claims contained within the May 2, 2011 support statement, the petitioner paraphrased a portion of the definition for executive capacity by stating that the beneficiary "is responsible for directing and managing the company's overall business and financial operations." Within the same statement the petitioner incorporated elements of the definition for managerial capacity, stating that the beneficiary delegates duties to his managerial subordinates.

Looking to the supplemental job descriptions provided in response to the RFE, the AAO finds that the statements were overly vague and devoid of a meaningful description of the beneficiary's actual tasks. As previously indicated, 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. *Id.* While the petitioner used words like manage, direct, and control in describing the beneficiary's foreign and proposed employment, such terminology is not sufficient to convey an understanding of the specific tasks the beneficiary performed and would perform in his respective positions, despite the leadership role he has maintained throughout the course of his employment with the foreign and U.S. entities. Merely establishing that the beneficiary's position is at the top of an organizational hierarchy and that the beneficiary exercises a high degree of discretionary authority is not sufficient to establish that the beneficiary allocated and would allocate his time primarily to the performance of qualifying managerial- or executive-level tasks. Moreover, in the case of the petitioning entity, whose organization is considerably smaller than the foreign entity, the record fails to establish that the petitioner's staffing at the time of filing was sufficient to relieve the beneficiary from having to primarily perform the petitioner's non-qualifying operational tasks. A favorable determination of eligibility is unlikely, if not impossible, given the lack of adequate job descriptions pertaining to the beneficiary and to the remainder of the petitioner's personnel.

While 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 are only incidental to the positions 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).

With regard to the beneficiary's employment abroad, notwithstanding the foreign entity's more complex organizational hierarchy as illustrated in the organizational chart, the fact remains that the petitioner provided an overly vague job description that is grossly lacking in specific details as to the beneficiary's actual job duties. An organizational chart alone does not serve as an adequate substitute for precise information about the beneficiary's employment or about the other employees and their respective roles in relieving the beneficiary from having to allocate his time primarily to the performance of non-qualifying tasks.

Additionally, while the director conceded the beneficiary's directing the management of the petitioning organization, directing the management of an organization is only one of the prongs of the four-part definition. Moreover, the denial indicates that the director was unclear as to whether the beneficiary was claimed to be employed in a managerial or in an executive capacity as the beneficiary's job descriptions contained elements of both statutory definitions. The director noted further that certain other job duties attributed to the beneficiary's positions did not fall within the parameters of either statutory definition. It is clear that the director took time to assess the beneficiary's positions under each of the statutory definitions despite the petitioner's initial claim indicating that the beneficiary was employed abroad and would be employed in the United States in an executive capacity.

The AAO finds that the petitioner failed to submit sufficient evidence to establish that the beneficiary was employed abroad or that he would be employed in the United States in a qualifying managerial or executive capacity. Based on these two independent conclusions, the instant petition cannot be approved.

(b)(6)

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.