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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 07 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 a Delaware corporation that seeks to employ the beneficiary in the United States in the position of head of international marketing. 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 6, 2011, which contained relevant information pertaining to the beneficiary's proposed employment with the petitioning entity. The petitioner also submitted evidence in the form of its organizational chart, tax documents, and a number of corporate documents as well as corporate and business documents pertaining to the foreign entity.

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 December 20, 2011 informing the petitioner of various evidentiary deficiencies. The RFE included requests for more detailed statements describing the beneficiary's foreign and proposed employment, organizational charts depicting each entity and the beneficiary's position therein, and the names, qualifications and job descriptions of the beneficiary's subordinates in each of her respective positions. With regard to the beneficiary's job description, the director asked the petitioner to elaborate on the previously submitted discussion of the beneficiary's job responsibilities by providing a list of the beneficiary's tasks accompanied by an estimate of the amount of time the beneficiary allocated to each task in her position with the foreign entity and the amount of time she would allocate to each of the assigned tasks in her proposed position with the U.S. entity.

In response, the petitioner provided supplemental job descriptions pertaining to the beneficiary's respective positions with the foreign employer and the U.S. petitioner as well as two organizational charts—one chart titled "U.S. Organization Chart" and the other titled "UK Organisation Chart." Although the petitioner was also asked to provide job descriptions and position qualifications for the beneficiary's subordinates at each of her respective positions, the petitioner's RFE response does not include this information. Rather, the petitioner supplemented the record with brief job descriptions and lists of professional achievements of employees deemed to be "key executives" none of whom were listed as the beneficiary's subordinates. Additionally, the AAO notes that the organizational chart that pertains to the foreign entity does not name the beneficiary in her claimed position as head of international marketing, the position the petitioner claims was held by the beneficiary from May 2005 through December 2008. Thus, in effect, the petitioner did not comply with the director's request for the foreign entity's organizational chart, as the UK chart the petitioner submitted did not include the beneficiary.

After considering the petitioner's response, the director determined that the petitioner failed to meet relevant eligibility criteria and therefore denied the petition in a decision dated May 15, 2012. With regard to the beneficiary's employment abroad, the director noted that the beneficiary claimed to have held the position of head of international marketing from October 2002 through December 2008, which is inconsistent with the petitioner's claim that the beneficiary initially occupied the position of marketing manager prior to being promoted to the position of head of international marketing in 2005. 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 director further noted the deficiency in the foreign entity's organizational chart in failing to specifically name the individual who occupied or occupies the position of head of international marketing, thus making it unclear whether the submitted chart was meant to serve as an illustration of the foreign entity's organizational hierarchy during the time of the beneficiary's employment abroad.

With regard to the beneficiary's proposed employment with the U.S. entity, the director noted the petitioner's failure to provide job descriptions for the beneficiary's subordinates and further observed that the petitioning organization "reflects a minimal number of employees associated with marketing related position titles." The director therefore concluded that the petitioner failed to establish that the beneficiary would oversee the work of professional or supervisory employees or that the beneficiary would otherwise be relieved from having to allocate her time primarily to the performance of non-qualifying tasks. The director also found the petitioner's organizational chart to be a confusing mix of employees, as many of the named individuals were found to be employees of the foreign entity. Finally, the director was unclear as to the type of qualifying relationship the petitioner purports to have with the foreign entity.

On appeal, counsel provides a brief asserting that the director's key adverse findings were erroneous. With regard to the latter finding concerning the petitioner's qualifying relationship, the AAO finds that adequate documentation has been submitted—including tax returns, various corporate documents, and the foreign entity's audited financial report—to establish that the petitioner is a wholly owned subsidiary of the foreign entity where the beneficiary was previously employed. As such, this proceeding will address only two of the director's three adverse finding—the beneficiary's employment capacity in her position with the foreign entity her employment capacity in the proposed position with the petitioner. With regard to these issues, a comprehensive discussion of the relevant evidence will be provided 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.

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 entities in question, the size of the subordinate staff of the foreign and U.S. entities, and any other facts that may contribute to a comprehensive understanding of the beneficiary's actual roles in the position she occupied while employed abroad and the position she would occupy with the petitioning entity.

Looking first to the beneficiary's position abroad, the petitioner has failed to clarify the beneficiary's actual placement within the foreign entity's organizational hierarchy during her period of employment. Although a detailed organizational chart was submitted for the foreign entity, the chart was undated and did not include the beneficiary among the listed employees. Despite the claim that the beneficiary occupied the position of head of international marketing during some portion of her employment abroad, it is unclear whether the chart provided is an accurate representation of the foreign entity during the relevant time period of the beneficiary's employment. In fact, after considering the foreign organizational chart in light of the information provided in the U.S. organizational chart, it appears that the foreign chart depicts the foreign entity's current organizational hierarchy. The AAO further notes that while the U.S. organizational chart shows two individuals—a marketing manager and a film division assistant—working in the international marketing department under the department head, the foreign entity's organizational chart shows the marketing manager and the head of international marketing as the only two individuals associated with the international marketing department.

Additionally, the record indicates that the petitioner failed to provide a job description pertaining to the beneficiary's employment with the foreign entity. The AAO notes that the instructions in the RFE expressly stated: "For each position you must submit . . ." It was therefore made clear to the petitioner that the instructions for a more detailed description of job duties did not apply only to the beneficiary's proposed employment, but rather were intended for the beneficiary's foreign employment as well. Thus, providing a job description that addresses only the proposed position is not sufficient and does not fully address the director's request. Despite the fact that the petitioner made repeated references to the duties the beneficiary has performed and would perform, to include the past tense, it is apparent that the past tense reference was made for the purpose of indicating that the beneficiary's position with the U.S. entity has remained, for the better part, unchanged since she assumed the position under a nonimmigrant visa classification. All references to the beneficiary's communication with the U.K. company indicate that such communication is done as part of her current position with the U.S. entity. Thus, the petitioner has failed to provide either a sufficient job description discussing the beneficiary's employment with the foreign entity or an organizational chart depicting the foreign entity's staffing hierarchy during the beneficiary's employment abroad as head of international marketing. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Without the requested evidence pertaining to the foreign entity and the beneficiary's position therein, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity. On the basis of this initial finding the instant petition must be denied.

Turning to the beneficiary's proposed position, the AAO will look first to the proposed job description that was provided in a February 3, 2012 statement from the petitioner's executive vice president, [REDACTED] who indicated that 50% of the beneficiary's job would be allocated to managing and directing marketing activities by spending approximately two hours per day communicating with the U.S. sales team, one to two hours communicating with the U.K. sales team via telephone or skype, and another one to two hours managing and directing the U.S. marketing and sales personnel and resolving on-going issues. Based on the

petitioner's organizational chart as submitted in response to the RFE, it appears that the beneficiary's direct sales subordinate is a sales executive, whose job description and educational credentials have not been provided, thus precluding the AAO from determining that the beneficiary's direct sales subordinate is a supervisory or professional employee. Although the chart also lists a number of other sales positions, including an executive vice president of sales, vice president of sales of Latin America and Asia, and a head of sales, none of these individuals is shown to be under the beneficiary's direct supervisory control.

Additionally, it is not clear that the tasks associated with the beneficiary's responsibility to grow and develop international markets are tasks within a qualifying managerial or executive capacity. The petitioner has not shown that negotiating and communicating with international distribution channels regarding film distribution and meeting with distributors, producers, journalists, and outside marketing personnel to achieve growth and development of international markets can be deemed as qualifying tasks. Rather, these are more indicative of tasks that are necessary to provide marketing services and thus would not be tasks in a qualifying managerial or executive capacity.

With regard to the beneficiary's responsibility to direct activities involving the development and implementation of marketing and promotional programs, the AAO is unclear as to the beneficiary's actual role with regard to updating networking websites, creating promotional posters and trailers, and developing other promotional material and press releases. The petitioner has failed to clarify the specific tasks the beneficiary would actually carry out and how involved she is in creating promotional materials and writing press releases. Further, when the petitioner states that the beneficiary would manage film festival activities and supervise all liaison activities with film and festival personnel, the petitioner does not clarify what underlying duties the beneficiary would perform. The petitioner has failed to clarify the beneficiary's role in organizing press junket activities, coordinating the film talent, or entering films in the festival. Without the full details of what actual tasks the beneficiary would be performing, the AAO is not able to conclude that the development and implementation of marketing and promotional programs can be deemed as time spent performing tasks in 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 performed or would perform were/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 petitioner failed to provide job descriptions of the beneficiary's subordinates and did not fully explain who would perform the underlying tasks the beneficiary has been assigned to oversee. This failure to submit relevant information coupled with the petitioner's provision of a job description that lacks sufficient information about the beneficiary's own daily tasks precludes the AAO from being able to conclude that the beneficiary's proposed employment with the petitioning entity would be in a qualifying managerial or executive capacity. As previously noted, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In light of the petitioner's failure to provide the necessary information pertaining to the beneficiary's proposed employment, this petition cannot be approved.


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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.