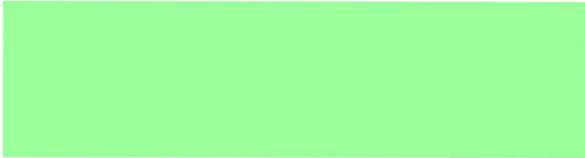




U.S. Citizenship
and Immigration
Services

(b)(6)



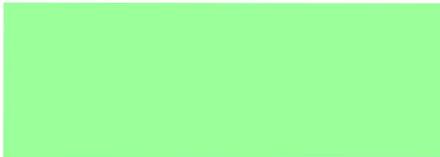
Date: **DEC 11 2014** OFFICE: TEXAS SERVICE CENTER

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Texas Service Center Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the decision of the director and remand the matter for further action.

The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a Florida corporation, is part of the restaurant industry. It claims to be an affiliate of the beneficiary's foreign employer, [REDACTED] located in Pakistan. The petitioner seeks to employ the beneficiary as its President.

On August 27, 2013, the director denied the petition concluding that the petitioner is a mere agent of another company and is not considered to be doing business.

On appeal, counsel asserts that the denial is based on irrelevant authority and a misapplication of the law. Counsel submits a brief and additional evidence in support of the appeal.

I. THELAW

Section 203(b) of the Act states in pertinent part (with emphasis added):

(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 been employed by 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 Form I-140 to seek classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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. *See* section 101(a)(44) of the Act. Such a statement must clearly describe the duties to be performed by the alien. *Id.*

With respect to managerial and executive capacity, section 101(a)(44) of the Act defines the terms as follows:

- (A) 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.

- (B) 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.

8 U.S.C. § 1101(a)(44) (emphasis added).

II. ISSUES ON APPEAL

A. The Petitioner Doing Business

The director denied the petition, concluding that the record lacks sufficient evidence to establish that the petitioner is doing business in the U.S. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." The director noted that the "petitioning corporation will be run through the foreign company since both businesses will have the same controlling individual at their highest positions within their respective businesses [and] such an arrangement establishes the united States corporation as a mere agent of the foreign company."

The director's finding that the petitioner did not submit evidence of doing business with independent corporations or entities implies a requirement that a petitioner must transact directly with an unaffiliated third party. However, the definition of "doing business" at 8 C.F.R. § 204.5(j)(2) contains no requirement that a petitioner for a multinational manager or executive must provide goods and/or services to an unaffiliated third party. Neither the plain language nor the regulatory history of the "doing business" provision supports such a requirement.

Here, the petitioner has provided sufficient evidence to establish that it is doing business. For example, the petitioner provided several invoices; bank statements; lease agreements; Form 1120, U.S. Corporation Income Tax Return for 2011; balance sheet and profit and loss statement; and, Form 941, Quarterly Employer's Quarterly Federal Tax Return for the fourth quarter of 2012. The petitioner provided sufficient evidence to establish that it is doing business in the United States, and we will withdraw the director's decision.

B. Additional Issue

Although the director's original basis for denial will be withdrawn, there are additional deficiencies in the record which prevent a finding that the petitioner and beneficiary are qualified for the benefit sought, and the appeal cannot be sustained based on the record as presently constituted.

The record contains insufficient evidence to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

The petitioner's descriptions of the beneficiary's job duties are vague and unclear. The petitioner described the beneficiary's job duties in overly broad terms such as the beneficiary will "plan, organize, direct and control the organization's major functions through the business's employees;" "review activity reports and financial statements to determine progress and status in attaining objectives and will revise objectives and plans in accordance with current conditions;" and, "direct and coordinate formulation of financial and sales programs to provide new sources of income, to maximize returns on investments, and to increase sales." This description provides little insight into what the beneficiary primarily would do on a day-to-day basis and does not explain the corporate financial goals and objectives. In addition, the petitioner stated that the beneficiary would review several reports but did not explain who in the company would handle the market research, the marketing program, the sales program, the negotiations and the financial operations and prepare the reports for the beneficiary's review. 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 his

daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. 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. The actual duties themselves will reveal the true nature of the employment. *Id.*

Furthermore, the petitioner has failed to provide any detailed explanation, along with credible and probative supporting documentation, establishing the U.S. entity's overall organizational structure, staffing levels, and the scope of its business activities at the time of filing. Based on the evidence in the record, it appears that the petitioner and its claimed subsidiary, [REDACTED], run two different [REDACTED] stores. The petitioner stated that the beneficiary would be President of both [REDACTED] stores and would manage the employees of each store. However, the record lacks any documentation evidencing that the beneficiary is authorized to run the two [REDACTED] stores such as a management agreement. Although the petitioner owns 51% of [REDACTED], the petitioner did not provide evidence that the beneficiary will be the President for that company.

Regarding the petitioner's staffing, the record does not contain Forms W-2 for all employees for 2013. In addition, the petitioner lacks a work schedule for all employees for the two [REDACTED] stores. It is also not clear why one [REDACTED] store would need a President, a General Manager/Vice President, a Manager, an Assistant Manager and a Shift Supervisor to supervise four sandwich artists/cashiers.

Overall, the record is insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

III. CONCLUSION

Based on the foregoing discussion, the director's decision will be withdrawn and the matter will be remanded for review and entry of a new decision. The director may issue a notice requesting any additional evidence he deems necessary in order to determine the petitioner's eligibility for the benefit sought.

ORDER: The decision of the director dated August 27, 2013 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision. If the new decision is adverse to the petitioner, the director shall certify his decision to the AAO.