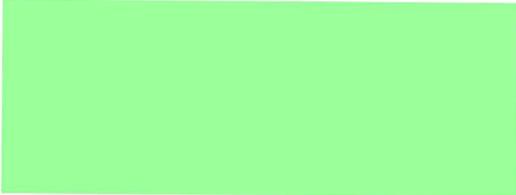


(b)(6)

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

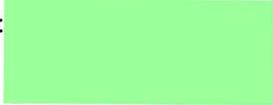


U.S. Citizenship  
and Immigration  
Services



Date: **MAY 14 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Form I-140, Immigrant Petition for Alien Worker, 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 petitioner is a corporation in the State of Florida that states it is engaged in tile, stone, and marble installation. It seeks to employ the beneficiary as its chief executive officer (CEO).

The director denied the petition, finding that the petitioner had failed to establish: (1) that it would employ the beneficiary in a qualifying managerial or executive capacity; or (2) that the beneficiary was employed by a foreign parent, affiliate or subsidiary of the petitioner in a managerial or executive capacity for at least one year prior to coming to the United States.

On appeal, the petitioner submits additional evidence in support of its assertion that it will employ the beneficiary in a qualifying managerial or executive capacity.

## I. The Law

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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

## II. The Issues on Appeal

### A. Managerial or Executive Capacity (United States)

The first issue addressed by the director is whether the petitioner had established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

On the Form I-140, the petitioner stated that the beneficiary will act in the capacity of owner and sole entrepreneur. The petition explained that it operates a tile, stone, and marble installation business with two to four employees. The petitioner submitted its 2007 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, indicating that it earned \$176,109 in revenue during that year. The beneficiary, on behalf of the petitioner, described his duties as follows:

[The beneficiary's] main duties and functions are the supervision of fiscal resources for investment and service enhancement. This corporate entity had been established in the State of Florida and I am expanding it throughout the United States. My corporate entity furnishes installation, restoration and maintenance of tile, natural stone and marble floors.

The petitioner submitted documentation demonstrating that the petitioner existed as a corporation in Florida and that it paid taxes to local entities. The petitioner also provided a support letter from the beneficiary expressing his desire to be granted an immigrant visa. The petitioner provided no additional evidence to establish that the beneficiary would be employed in a managerial or executive capacity as those terms are defined at section 101(a)(44) of the Act.

In denying the petition, the director determined that the beneficiary's duties indicated that the beneficiary was primarily performing non-qualifying operational duties consistent with the direct provision of goods and services.

On appeal, the petitioner submits additional evidence for consideration. This evidence includes a signed statement of the petitioner explaining that it had failed to previously send all pertinent corporate documents in support of the Form I-140 petition due to a medical issue in the beneficiary's family. The petitioner also submits an additional support letter stating that this office should withdraw the erroneous decision of the director, as well as an affidavit from the petitioner attesting to its existence as a corporation in the State of Florida.

In addition, the petitioner submits IRS Forms 1120S from 2005 through 2007 and documentation demonstrating that the petitioner has paid local taxes. Further, the petitioner provides two support letters from clients. In a letter dated October 20, 2009, [REDACTED] of [REDACTED]

states that the beneficiary has worked with his company for approximately six and a half years. Mr. states the following with respect to the beneficiary:

[The beneficiary] is licensed and insured and does carpet, wood, vinyl and tile installations. He also has brought in various jobs from the outside that helps the company out in its business. He is very responsible and does great work for us. He is very customer oriented and makes sure the customer is happy with the work done.

The petitioner also submits a letter dated October 23, 2009 from , Project Supervisor with Mr. states that the beneficiary "has worked as a sub-contractor for me on various size projects for a period of five years." Mr. indicates that during this period he "had the great pleasure of seeing first hand what a skilled craftsman [the beneficiary] is." Mr. notes that he cannot recall an instance where the beneficiary missed a deadline, and that he often brought projects in below budget.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

In order to determine whether the beneficiary would be employed in a qualifying executive or managerial capacity, U.S. Citizenship and Immigration Services (USCIS) will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). Further, 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).

Following a review of the position description, the petitioner has provided little detail regarding the beneficiary's day-to-day duties. The petitioner has only stated that the beneficiary will perform the "supervision of fiscal resources for investment and service enhancement," but has not articulated the specific day-to-day tasks which make up these general functions. 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. Without a detailed description of the beneficiary's proposed duties, it cannot be determined whether the beneficiary will perform primarily qualifying tasks consistent with a qualifying executive or manager. 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).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business,

and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The limited supporting evidence provided indicates that the beneficiary is primarily engaged in the performance of non-qualifying operational tasks consistent with the direct provision of goods and services to clients. For instance, support letters submitted from representatives of [REDACTED] and [REDACTED] demonstrate that the beneficiary is acting as a subcontractor providing services directly to these clients. Mr. [REDACTED] of [REDACTED] explains the beneficiary as a "skilled craftsman" indicating that he is primarily performing services for this client and not performing qualifying executive or managerial duties. Further, Mr. [REDACTED]'s support letter also explains that the beneficiary works as a subcontractor and is directly responsible for bringing projects in on time for the client. As such, the limited evidence submitted suggests that the beneficiary is primarily engaged in the performance on non-qualifying operational tasks, such as installing flooring for customers as a subcontractor for other companies. The petitioner has submitted evidence suggesting that the beneficiary's duties include administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a qualifying manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Additionally, the petitioner has submitted little relevant evidence to establish that the petitioner has employees to relieve the beneficiary from primarily performing non-qualifying duties. Indeed, the petitioner has not identified a single other employee or provided supporting documentation to corroborate the employment of additional staff, despite stating on the Form I-140 that it employs "two to four" employees. The petitioner has not provided an organizational chart, position descriptions, or clarified who the beneficiary oversees. In fact, the beneficiary refers to himself as a sole proprietor, leaving question as to whether the petitioner regularly employs anyone other than the beneficiary. As such, the petitioner has not submitted sufficient evidence to establish that the petitioner has sufficient employees to support the beneficiary in a qualifying managerial or executive capacity. 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)).

Therefore, in conclusion, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. For this reason, the appeal must be dismissed.

#### **B. Managerial or Executive Capacity (Foreign Entity)**

The director also denied the petition based on a finding that the petitioner had not established that the beneficiary was employed in a managerial or executive capacity with a qualifying foreign employer for one year during the three years prior to his admission to the United States.

On appeal, the petitioner does not contest the director's finding that the petitioner has not established that the beneficiary was employed in a managerial or executive capacity with the foreign employer. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

The AAO will not disturb the decision of the director. Again, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). In the current matter, the petitioner has provided no evidence to support a conclusion that the beneficiary was formerly employed in a qualifying managerial or executive capacity with a foreign affiliate, subsidiary, branch or parent of the petitioning company. In fact, the petitioner has not identified the beneficiary's last foreign employer or his last overseas position. As such, the petitioner has not established that the beneficiary has been employed in a qualifying managerial or executive capacity abroad for one of the three years preceding his admission to the United States. For this additional reason, the appeal must be dismissed.

### C. Qualifying Relationship

Although not addressed in the director's decision, the evidence of record is insufficient to establish that the petitioner has a qualifying relationship with a foreign entity which formerly employed the beneficiary.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary"). The regulations at 8 C.F.R. § 205.5(j)(2) further provide that "multinational" means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

In the current matter, the petitioner has not identified the entity from which the beneficiary is transferring as a multinational executive or manager. Further, the petitioner has not provided any evidence to demonstrate ownership in any foreign entity, or evidence establishing that the petitioner has common ownership with a foreign entity. The petitioner has also not provided evidence that any related foreign entity exists and continues to conduct business. As such, the petitioner has not established that a qualifying relationship exists between it and the beneficiary's former employer abroad. For this additional reason, the petition cannot be approved.

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).

### **III. Conclusion**

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.