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U.S. Citizenship  
and Immigration  
Services



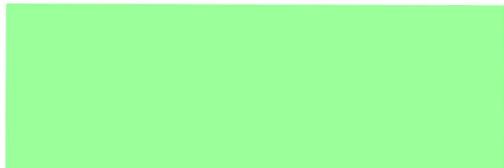
DATE: **NOV 04 2014** OFFICE: TEXAS SERVICE CENTER

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, Texas Service Center, denied the preference visa petition. Although the director granted the petitioner's motion to reopen,<sup>1</sup> he affirmed the original denial. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded for further consideration.

The petitioner is a branch of the foreign corporation, which is authorized to conduct business in the State of Texas. It seeks to employ the beneficiary as manager of its U.S. branch office. 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.

On September 16, 2013, the director determined that the petitioner had not established that it has been doing business pursuant to the regulatory definition at 8 C.F.R. § 204.5(j)(2). Based on a finding issued by the 2<sup>nd</sup> Circuit Court of Appeals, the director issued the following conclusion:

The evidence in this visa petition demonstrates . . . that the petition is merely an agent of the foreign business because of the same ownership;<sup>2</sup> full power over executive personnel assignment and marketing and operational policies; and the complete financial dependency of the petitioner on the foreign company.

*See Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp.*, 751 F.2d 117, 120-122 (2d Cir. 1984).

In response to the beneficiary's motion to reopen and reconsider, filed on October 18, 2013, the director issued a follow-up decision, dated December 27, 2013. The director determined that the petitioner's U.S. branch office "constitutes the 'mere presence of an agent or office,'" despite acknowledging the petitioner's submission of supporting evidence, including third-party shipping invoices, letters of business engagement with other entities, and business contracts.

On appeal, counsel submits a brief in which she discusses the above named court of appeals decision, pointing out that the cited case focused on jurisdictional issues, wherein the court was tasked with finding whether a non-New York parent company, doing business in New York through its New York-based subsidiary, could be sued in the State of New York. Counsel pointed out that the factors relevant to the jurisdictional issues addressed in the appeals court case were unrelated to the factors deemed probative in determining whether the petitioner is doing business within the immigration context and in the scope of the regulatory definition for "doing business," which is defined as "the regular, systematic, and continuous provision of goods and/or services . . . and does not include the mere presence of an agent or office." 8 C.F.R. § 204.5(j)(2).

Given the petitioner's submission of numerous documents, including business invoices and business contracts, supported by bank documents, financial reports, and tax filings, we find that the petitioner submitted sufficient evidence to establish that it had been and continues to do business in the United States. The

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<sup>1</sup> Although the petitioner filed a combined motion to reopen and reconsider, the director determined that the petitioner did not provide sufficient evidence to support a motion to reconsider and thus dismissed that portion of the combined motion.

<sup>2</sup> Referring to the common ownership between the foreign entity and the U.S. branch office.

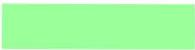
director erroneously focused on court cases dealing with civil procedural issues, such as personal jurisdiction, was misplaced and thus led the director to overlook pertinent documents that revealed the quality and quantity of the petitioner's continuous business transactions in the United States. As such, we hereby withdraw the director's decision, which was based exclusively on an incorrect determination.

Notwithstanding our withdrawal of the director's decision, the record does not establish that the petitioner would employ the beneficiary in the United States in a qualifying managerial or executive capacity. In general, when examining the executive or managerial capacity of the beneficiary, we review 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 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). We then consider the beneficiary's job description in light of the organizational hierarchy within which the beneficiary will be employed. Focusing on this highly relevant information allows for a more meaningful understanding of the beneficiary's placement and role within the petitioner's organization. It also addresses the relevant issue of who performs the petitioner's operational tasks so that the beneficiary would not have to allocate his time primarily to the non-qualifying tasks that are necessary for the petitioner to function on a daily basis.

Moreover, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003).

In the present matter, the job description provided in response to the director's request for evidence, dated May 8, 2013, is overly vague and fails to specify which daily tasks are indicative of the beneficiary's management of the U.S. branch office. While the petitioner indicated that the beneficiary would oversee all personnel involved in the operation of each vessel under the petitioner's management, the petitioner did not list any specific tasks that would clarify how the beneficiary's supervisory role translates into daily tasks, nor is it apparent that the personnel whom the beneficiary would manage are managerial, supervisory, or professional employees. *See* section 101(a)(44)(A)(ii) of the Act. The petitioner also indicated that the beneficiary would market the petitioner's shipping services. Without further explanation, it is unclear that marketing activities constitute qualifying managerial or executive tasks. Further, when looking to the staffing of the petitioner's U.S. branch, it is unclear how the beneficiary would be relieved of having to perform non-qualifying tasks given that the beneficiary is the only employee working at the U.S. branch office. In light of these deficiencies, additional evidence is necessary in order to conclude that the beneficiary would be employed primarily in a qualifying managerial or executive capacity, an element that is necessary for the petitioner to be deemed eligible for the benefit sought herein.

Accordingly, the case will be remanded for a new decision, which shall take proper notice of the beneficiary's duties and the staffing of the petitioner's U.S. branch office. 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 December 27, 2013 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.