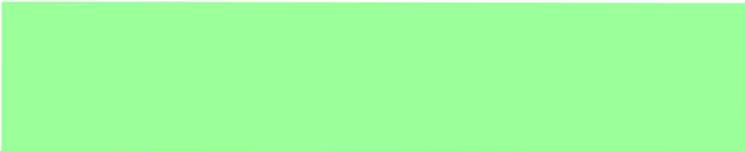


(b)(6)

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

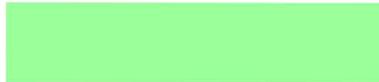


Date: **NOV 25 2014**

OFFICE: TEXAS SERVICE CENTER

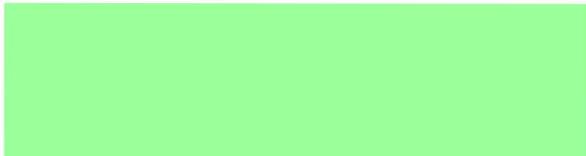
FILE: 

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,

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

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 engaged in business communications. It claims to be the parent company of the beneficiary's foreign employer, [REDACTED], located in Venezuela. The petitioner seeks to employ the beneficiary as its Special Projects Director.

On February 27, 2014, the director denied the petition concluding that the petitioner failed to establish that it has the ability to pay the beneficiary's proffered wage and denied the petition on that basis. On appeal, counsel disputes the director's conclusion and submits a supporting statement along with supplemental documents in an effort to overcome the basis for denial.

#### I. THE LAW

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).

In addition, the regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the *prospective United States employer* has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

(Emphasis added.)

## II. ISSUES ON APPEAL

### A. The Petitioner's Ability to Pay the Proffered Wage

The primary issue in this proceeding is whether the petitioner has the ability to pay the beneficiary's proffered wage as of the filing date, April 12, 2013.

The petitioner indicates on the Form I-140, at Part 6, that it will pay the beneficiary \$50,000 per year. In determining the petitioner's ability to pay the proffered wage, United States Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary.

Upon review of all of the documentation submitted by the petitioner, the beneficiary has been receiving an annual salary of \$60,000 since he began his employment with the petitioner in October 2012. The petitioner provided paystubs, tax returns, Forms W-2 for 2012 and 2013, Form 1120, U.S. Corporation Income Tax Return for 2011; balance sheet and profit and loss statement; and, Form 1040, U.S. Individual Income Tax Return for 2013, indicating that the beneficiary received \$60,000 in wages. The petitioner provided sufficient evidence to establish that it has the ability to pay the proffered wage to the beneficiary, and we will withdraw the director's decision.

### B. Additional Issues

#### a. Employment Abroad in a Managerial or Executive Capacity

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 allocated his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign company that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner stated vague duties such as the beneficiary was responsible for the "creation and implementation of policies that would generate various business relationships;" and was "responsible for setting forth the budget for the entire company and reviewing all financial material to ensure that the company meets its financial goals." This description provides little insight into what the beneficiary primarily did on a day-to-day basis and did not explain the foreign company's operations, policies and goals. 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 foreign company's overall organizational structure, staffing levels, and the scope of its business activities at the time of filing. The record lacks an organizational chart of the foreign company and information regarding the duties performed by the beneficiary's subordinates. The record also lacks evidence of the foreign company's employees such as paystubs or tax records.

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

b. U.S. Employment in a Managerial or Executive Capacity

The record also lacks sufficient 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 "create and structure the business unit that will handle all Apple accessories, including sources, online presence, and distribution agreements;" "develop and implement the Data Center Strategy;" and, "lead the Software Development team." 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 did not provide a percentage breakdown of the duties to be performed by the beneficiary. 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. In a support letter dated January 30, 2013, the petitioner stated that it is "seeking qualified candidates to hire several positions." In addition, the petitioner provided an organizational chart but it listed departments and did not list any individuals. Thus, it is not clear who is actually working for the petitioner and what are the duties that will be performed by the beneficiary's subordinates.

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 February 27, 2014 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.