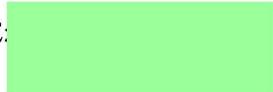


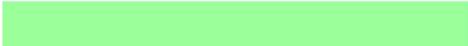


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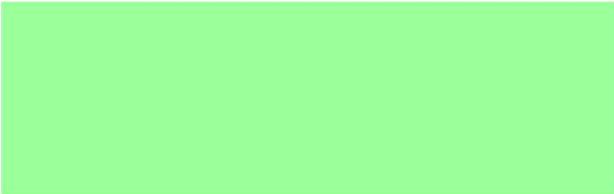
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DATE: **OCT 02 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

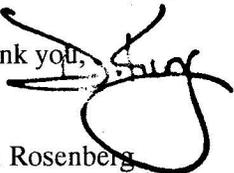
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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 Nebraska Service Center Director denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this 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 engaged in automobile manufacturing and claims to be a subsidiary of [REDACTED] the beneficiary's former employer in Japan. The petitioner seeks to employ the beneficiary in the position of Division Manager.

The director denied the petition on November 25, 2013, concluding that the petitioner failed to establish that the beneficiary's employment abroad was within a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, counsel submits a brief disputing the director's adverse findings.

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.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

II. THE ISSUES ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

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.

1. Facts

In a letter dated April 24, 2013, the petitioner explained that the beneficiary's assignment with the foreign employer was as Staff Engineer with the Equipment Group, and he performed the following duties:

In this position, he oversaw the modification and renewal of production equipment based on the business plan for Line 1. He also oversaw and supervised the addition and modification of production equipment for the new model. Specifically, [the beneficiary] supervised the equipment design, order and installation of such

equipment. He also supervised a special project that focused on improving production flexibilities at its production operations in North America.

On September 11, 2013, the director sent a request for evidence (“RFE”). In part, the director requested a detailed job description of the beneficiary’s specific tasks on a normal business day including the percentage of time spent on each task when employed by the foreign company. In addition, the director requested an organizational chart of the foreign company, including the names of all departments and teams, and the names and detailed description of the job duties for the beneficiary’s immediate supervisor and subordinate employees.

In a response letter dated October 18, 2013, the petitioner provided a statement from the administration manager that provided the duties performed by the beneficiary as staff engineer at located in Japan, as follows:

- Overseeing the modification and renewal of production equipment based on the business plan for Line 1 as Chief of the Equipment Group (35%). At the time, was working on the 1996 model of the As Chief, [the beneficiary] managed approximately 30 projects related to the 1996 model, including the modification and renewal of production equipment. He checked the progress of these projects on a daily basis to ensure that the requirements for the model were met. He directed any necessary modifications to meet the requirements.
- Overseeing and supervising the addition and modification of production equipment for the new model. Specifically, [the beneficiary] supervised equipment design, order, and installation of such equipment (20%). In supervising the equipment design, he instructed subordinates to check manipulability, cost, cycle time, productivity and maintainability. In supervising order, he instructed subordinates to check order timing, vender reliability, investment, and deadlines. In supervising installation, he instructed subordinates to check preparation plans, installation schedules, and risk management to ensure that there was no negative impact on the mass production line.
- Supervise a special project that focused on improving production flexibilities at its production operations in North America (45%). The project was called ‘ and the purpose was to improve the capabilities of the production line. Specifically, [the beneficiary] was in charge of increasing capacity for the in Ohio. Working remotely with associates at the plant, [the beneficiary] directed the tire installation machine cycle up modification, body carrier convey system cycle up modification, front/rear window glass installation system cycle up modification, line body drop lifters cycle up modification, and door convey system modification.

The petitioner provided the same organizational chart previously submitted where it shows that the beneficiary was staff engineer for the equipment engineering group that has “approximately 30 associates.”

The petitioner also indicated that the beneficiary’s supervisor was a Group Leader who was “responsible for production equipment as related to business plan and new model project.” The petitioner also listed the names of 20 individuals that were the beneficiary’s subordinates who were “responsible for adopting new model specifications and profile for production line equipment, including modification, addition, and renewal of equipment.” The petitioner did not provide a job title for each subordinate. On appeal, counsel for the petitioner notes that the RFE did not require job titles of the beneficiary’s subordinates but instead only required names and a detailed description of their job duties.

The director denied the petition on November 25, 2013, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. In denying the petition, the director determined that the petitioner provided an overly broad job description that failed to convey an understanding of what the beneficiary primarily did on a day-to-day basis. The director concluded that the beneficiary did not supervise a staff comprised of subordinate managerial, supervisory or professional employees, or that he was otherwise relieved from primarily performing non-managerial and non-executive functions associated with the operation of the foreign company's business.

On appeal, the petitioner submits a letter dated December 19, 2013, providing additional information of the beneficiary’s position abroad as follows:

The Assembly Engineering Department consists of four groups: Equipment Engineering, Product Engineering, Overseas Support, and IT. The Department has a Manager, Mr. [REDACTED] and each of the groups is led by a Senior Staff Engineer (with the exception of the IT Group which is led by a Staff Engineer due to its small size). The Equipment Engineering Group and Product Engineering Group are divided further into subgroups. Each of the subgroups is led by a Staff Engineer. Thus, although the other groups employed Staff Engineers, this does not detract from the fact that [the beneficiary] was serving in a managerial capacity. [The beneficiary] is the Staff Engineer who led, supervised, and managed Line #1. Additionally, the associates supervised by [the beneficiary] in Line #1, including the positions of Coordinator, Chief, and Senior Technician, are all professional Engineers.

Finally, we would like to reemphasize [the beneficiary’s] managerial duties performed abroad. [The beneficiary] managed Line #1 of the Equipment Engineering Group. He supervised and controlled the work of other professional engineers. [The beneficiary] also had the authority to recommend personnel actions, including hiring, firing, promotions, and leave to the Department Manager. Finally, [the beneficiary] exercised direction over the day-to-day operations of Line #1. He should not be

considered a first-line supervisor, because the employees he supervised were professionals. Additionally, [the beneficiary] spent all of his time performing these managerial duties.

The petitioner provided a new organizational chart of the foreign company that provided more detail regarding the assembly engineering department. The chart lists the Equipment Engineering group that is led by a senior staff engineer, who supervises three lines. The beneficiary is listed as Staff Engineer for Line #1, and as a leader for that line.

2. Analysis

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 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). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary was relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding 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 "overseeing the modification and renewal of production equipment based on the business plan for Line 1 as Chief of the Equipment Group;" "managed approximately 30 projects related to the 1996 [redacted] model, including the modification and renewal of production equipment;" "overseeing and supervising the addition and modification of production equipment for the new model;" and, "supervised equipment design, order, and installation of such equipment." This description provides little insight into what the beneficiary primarily did on a day-to-day basis and did not explain the details of the modification and renewal of production equipment process. Furthermore, 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.

In addition, the director requested in his RFE a detailed job description for the beneficiary's subordinates at the foreign company but the petitioner only provided a one sentence description of the duties performed by all of the beneficiary's subordinates. 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).

Furthermore, the petitioner stated that the beneficiary spent 45 percent of his time to "supervise a special project that focused on improving [redacted] production flexibilities at its production operations in North America," where the beneficiary "was in charge of increasing capacity for the [redacted] in Ohio." Given that this project took up almost half of his time, we have no information of the employees he worked with at the [redacted] in Ohio to assist him with the special project. It is not clear as to how the beneficiary assisted the North American plant while working in Japan and what were his day-to-day duties when working on this special project. 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)).

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary performed abroad. While the petitioner has provided a breakdown of the percentage of time the beneficiary spent on his duties, the petitioner has not articulated whether each duty was managerial or executive.

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involved supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

The petitioner did not provide a detailed description of the duties performed by the beneficiary's subordinates abroad, or educational level for each employee. In addition, the petitioner did not provide any evidence that these individuals were employed by the foreign company such as payroll records or paystubs. Thus, the petitioner has not established that these employees possessed or required an advanced degree, such that they could be classified as professionals. Nor has the petitioner shown that these employees supervised subordinate staff members or managed a clearly defined department or function of the foreign company, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's subordinate employees abroad are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function"

within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(3)(i)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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 *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function for the foreign company.

In light of the foregoing discussion, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

B. Qualifying Relationship

Beyond the decision of the director, the petitioner has not established a qualifying relationship with the entity where the beneficiary was employed abroad. 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).

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

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.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In the present matter, the petitioner claims to be a subsidiary of [REDACTED] where the beneficiary was employed prior to coming to the United States to work for the petitioner.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificated, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, United States Citizenship and Immigration Services ("USCIS") is unable to determine the elements of ownership and control. In the instant case, the petitioner did not provide any documentation to establish a qualifying relationship, thus, the petitioner has not established that it maintains the requisite qualifying relationship with the beneficiary's foreign employer and the appeal will be dismissed for this additional reason.

III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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). Therefore, based on the additional grounds of ineligibility discussed above, this petition cannot be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.