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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **AUG 06 2015**

[Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on February 13, 2014, seeking to classify the beneficiary as an employment-based immigrant under 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, a seller of electronic equipment, seeks to employ the beneficiary in the United States as its general manager.¹

The director denied the petition on November 3, 2014, concluding that the petitioner had not established that the beneficiary's intended duties in the United States qualify as managerial or executive.

On appeal, the petitioner submits a legal brief with supporting exhibits. The petitioner contends that the decision "was rooted in an over simplified understanding of the size and nature of the petitioner's organization." The petitioner also contends that the director held the petitioner to too high a standard of evidence.

I. 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 the alien 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 only to 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.

¹ Some documents in the record refer to her as the president.

A United States employer may file Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, 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 letter must clearly describe the duties to be performed by the alien.

Section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), provides:

(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.

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

II. Issues on Appeal

A. Managerial/Executive Duties

The sole stated ground for denial concerns the nature of the beneficiary's duties for the petitioning company in the United States.

1. Facts

In a February 7, 2014 letter submitted with the petition, the petitioner stated that the company's "primary focus is

Regarding the beneficiary's duties, the petitioner stated:

[The beneficiary] is responsible for further developing our relationship with American and North America customers. She directs the daily activities of the corporation with the staff. She discretions [*sic*] over the daily operations and in doing so; she hires other managers and employees. She reports to the Board of Directors and our parent company in China. [The beneficiary's] duties also include being responsible for the flowing profitability of American Subsidiary:

1. To carry out the resolution of the board of directors, implement the annual operation plan and objectives approved by the board of directors;
2. To conduct the daily business and management work of the company to ensure the company's objectives are met;
3. To investigate the manufacturers and suppliers of the target products, and finish the value of import and export of the products;
4. To take part in the discussion of cooperative agreements; and sign the related agreements and contracts on behalf of the company;
5. To hire the staffs, to establish the company's management team; to make employees performances management system;
6. To check and implement the investment plan of the company;
7. To submit the report about the company's business to the board of directors regularly;
8. To formulate the basic management system of the company.

The petitioner asserted that the beneficiary is the immediate supervisor of four employees: (1) a sales manager with an associate degree in marketing; (2) a product manager with a bachelor's degree in computer science; (3) an administrative assistant (no degree claimed); and (4) a support engineer with an associate degree in computer science.

Internal Revenue Service (IRS) documents in the record show that the petitioner employed a total of nine workers in 2013, but never more than five during any given month. Only the beneficiary and one other employee (the sales manager) earned more than \$19,000 at the company in 2013. The petitioner did not specify the titles held by the other five employees not named in the petitioner's initial statement. An IRS Form W-2, Wage and Tax Statement, indicates that the petitioner paid the beneficiary's spouse \$3,541.66 in 2013.

A two-level organization chart for the petitioning entity shows the "President" alone on the top level. An accompanying explanatory statement described the second level of the organization chart: "Under the management of the president, we basically have two groups: one is [the] background group that take[s] charge of providing products and their information, the other is the sales team." The "sales team" consists of the four above-named employees, foremost among whom appears to be the sales manager, who is in charge of "organizing trade shows, meeting with customers and do[ing] presentations, contact[ing] . . . manufacture[r]s representatives and distributors, quoting and get[ting] orders from the customers."

The "background group" consists of the "AD department," "R&D department," and "Product factory," all of which are part of the parent company in China. The petitioner asserted that the parent company's "R&D department designed [the petitioner's] products according to the president[']s and the products manager's requirements." The record does not establish what degree of authority, if any, the beneficiary exercises over these components of the parent company.

The director issued a request for evidence (RFE) on August 18, 2014. The director requested "a definitive statement from the petitioner which describes the beneficiary's job duties," and which shows how much time the beneficiary devotes to each task. In response, the petitioner submitted a breakdown containing the following information:

% of Time	Duties
10	"In charge of . . . interviewing, hiring and building the team"
20	"Develop a strategic plan to advance the company's mission and objectives and to promote revenue, profitability, and growth"
20	"Oversee company operations to insure production efficiency, quality, service, and cost-effective management of resources"
15	"Plan, develop, and implement strategies for generating resources and/or revenues for the company"
15	"Approve company operational procedures, policies, and standards. Evaluate performance of executives for compliance with established

- policies and objectives of the company and contributions in attaining objectives”
- 10 “Review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions”
- 10 “Present company report at Annual Stockholder and Board of Director meetings”

The petitioner submitted an updated employee list, showing four names as before. Three of the names also appeared on the earlier list, indicating one new hire since that time.² The petitioner also submitted a modified organizational chart showing the same four subordinate employees as before, as well as an “AD Department” and “Finance.” The new chart placed the product manager in charge of the “R&D Department” and “Product Factory.” Job descriptions indicated that the product manager position is the only one that requires a bachelor’s degree.

The petitioner submitted job descriptions for the beneficiary’s subordinates, listing the following essential job functions:

Sales Manager

1. Determines annual unit and gross-profit plans by implementing marketing strategies, analyzing trends and results.
2. Establishes sales objectives by forecasting and developing annual sales quotas for regions and territories, projecting expected sales volume and profit for existing and new products.
3. Implements sales programs by developing field sales action plans.
4. Maintains sales volume, product mix, and selling price by keeping current with supply and demand, changing trends, economic indicators, and competitors.
5. Establishes and adjusts selling prices by monitoring costs, competition, and supply and demand.
6. Completes sales operational requirements by scheduling and assigning employees and manufacture[r]’s reps, following up on work results.
7. Maintains sales staff and manufacture[r]’s reps by recruiting, selecting, orienting, and training employees and manufacture[r]’s reps.
8. Maintains sales staff job results by counseling and disciplining employees and manufacture[r]’s reps, planning, monitoring, and appraising job results.
9. Maintains professional and technical knowledge by attending educational workshops, reviewing professional publications, establishing personal networks, participating in professional societies.

² The petitioner’s new product manager has the same name as the beneficiary’s spouse. Financial documents from the parent company in China, dated June 2014, showed the same name in reference to a “Principal” or “Enterprise Principal” of the company. The beneficiary’s spouse also signed the petitioner’s share certificates, indicating that the parent company owns 51% of the petitioning company and the beneficiary owns the remaining 49%.

10. Contributes to team effort by accomplishing related results as needed.

Product Manager

1. Managing the entire product line life cycle from strategic planning to tactical activities[.]
2. Specifying market requirements for current and future products by conducting market research supported by on-going visits to customers and non-customers.
3. Driving a solution set across development teams (primarily Development/ Engineering, and Marketing Communications) through market requirements, product contract, and positioning.
4. Developing and implementing a company-wide go-to-market plan, working with all departments to execute.
5. Analyzing potential partner relationships for the product.

Support Engineer

1. Carry out factory acceptance testing and system integration testing on our fiber Ethernet systems.
2. Writing technical documents such as datasheets, user manuals and A&Es.
3. Conducting operation and maintenance training including the preparation of training manuals.
4. Installation of hardware, software and cabling within our fiber Ethernet systems.
5. Configuring the system according to customer environment and their requirements.
6. Understanding customer's operational and technical requirements and translating them to a system solution.
7. Providing pre- and after-sale technical support (on-call, rotating duty basis).
8. The support engineer may be required to travel regularly to a customer location (nationally/internationally) for activities such as on-site customer support, system installations and any other project related activities.
9. To stay abreast of new technologies and new product releases.

Administrative Assistant

1. Primary phone coverage (first to answer all incoming calls)
2. Prepare and mail all UPS packages.
3. Sort and distribute incoming mails.
4. Oversee all aspects of publication orders including inventory and maintenance of inventory
5. Filing of materials in general files area.
6. Assist with bookkeeping/accounting functions as appropriate.
7. Inventory and track off site storage

8. May be called upon to assist with special projects and assume responsibility for the development, administration, and promotion of specific projects, as required
9. Perform other duties as assigned

In the November 2014 denial notice, the director found that “[t]he petition lacked sufficient evidence that the firm’s staffing will be of sufficient size and composition to support an executive or managerial position,” and that “[t]he evidence does not clearly establish that the beneficiary’s direct subordinates are primarily managerial or supervisory within their own job capacities.” The director found that the beneficiary’s job description “is more correctly seen as a mission statement rather than a detailing of the beneficiary’s actual tasks.”

On appeal, the petitioner contends that the director “grossly oversimplified” the petitioner’s “nature and complexity,” and that the director failed to place the beneficiary’s duties in their proper context. The petitioner asserts that “the Director took no issue with the duties of the beneficiary,” but “simply conclude[d] that the size and nature of the petitioner does not establish the firm possesses the organizational complexity to warrant an employee whose duties are primarily executive or managerial.”

The petitioner also observes that “it uses a network of twelve companies to sell its products,” and those companies, in turn, engage “forty-three individual representatives in the United States and Canada.” The petitioner had previously submitted copies of Sales and Marketing Representative Agreements, assigning sales territories to third party contractors.

2. Analysis

Upon review, we concur with the director’s finding that the beneficiary’s intended duties in the United States do not qualify as managerial or executive.

As a preliminary matter, the petitioner notes that the director used the word “clearly” several times in the denial notice, stating, for instance, that the petitioner did “not clearly establish that the beneficiary’s direct subordinates are primarily managerial or supervisory.” The petitioner contends that the director improperly held the petitioner to “a higher standard” of evidence than the preponderance of evidence standard described in *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). While the isolated uses of the adverb “clearly” may have conveyed this impression, this would constitute a prejudicial error only if the petitioner had met the lower (preponderance) burden. The record as a whole does not support such a finding.

The petitioner, on appeal, observes that the size of the petitioning company cannot be the sole basis for the denial of the petition. The petitioner states: “Instead of *first* focusing on the beneficiary’s duties, then asking whether the totality of the evidence supports these duties, the Director jumped to the conclusion that the petitioner’s organization lacked the complexity to warrant an employee who primarily performs qualifying duties.” (Emphasis in original).

The director, however, did not base the denial solely on the size of the company. The record does not support the petitioner's claim, on appeal, that the director "takes no issue with the descriptions [of the beneficiary's duties] or delegation of responsibilities." The director stated that the beneficiary's job description "is more correctly seen as a mission statement rather than a detailing of the beneficiary's actual tasks. The description does not enhance an understanding of the precise daily duties the beneficiary performs." The job description relies mostly on generalities such as "[o]versee company operations" and "implement strategies," which provide no information about the beneficiary's daily tasks.

Where the description does include details, the record does not support those assertions. The petitioner asserts that the beneficiary "spent 10 percentage [sic] of the time on interviewing, hiring and building the [petitioner's] team." Between the initial filing and the RFE response, the record shows only one change in the petitioner's staffing, specifically the replacement of the product manager. The new product manager appears to be the beneficiary's spouse, who is also listed as a "principal" or "enterprise principal" at the petitioner's parent company overseas in documents as recent as June 2014, well after his arrival in the United States. The petitioner has not explained or demonstrated how this single hiring decision would have taken up a tenth of the beneficiary's working time. The documentation from 2013 shows a somewhat higher rate of turnover, but the petitioner has not shown that the hiring of a total of nine employees during a calendar year realistically occupied 10% of the beneficiary's working time (over 200 hours over the course of the year, assuming the beneficiary worked 40 hours per week). Similarly, the petitioner did not show that the company produces so many reports that their preparation and presentation occupy ten percent of the beneficiary's time.

The petitioner states, on appeal, that the beneficiary's "duties manifest themselves in the form of meetings and emails, a presence at trade shows as the face of the company, and giving direction and receiving updates from her direct subordinates. . . . [I]t is difficult to know what else the Director requires when he asks for specific duties." The petitioner did not offer this level of detail until the appeal, and therefore the director could not have taken this information into account when rendering the decision. Furthermore, the record does not document the beneficiary's "meetings and emails [and] presence at trade shows." The petitioner had previously submitted several photographs from trade shows, with captions identifying three of the petitioner's employees but not the beneficiary.

The petitioner correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a petition for classification as a multinational manager or executive. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. See, e.g. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15.

While acknowledging the company's small size, the petitioner asserts that three of the beneficiary's subordinates "are acting in a managerial capacity, overseeing either sales representatives or the production and manufacturing of its products." The petitioner indicates that it has delegated the performance of non-managerial and non-executive functions to third-party sales representatives and the manufacturing facilities operated by the petitioner's parent company.

The petitioner, on appeal, asserts that its sales manager "manages the sales efforts of [the contracted] representatives" and that its "Network Engineer . . . is responsible for ensuring the representatives are properly trained and knowledgeable about [the petitioner's] products." The petitioner submits a letter from its sales manager, describing this arrangement:

[T]he Network Engineer . . . and I are in constant contact with our representatives coordinating their sales efforts, ensuring they are properly trained on our products, ensuring they have support with system design, and providing them with quotations for their existing client base and new potential clients. . . . The representatives regularly report to us and give updates on the projects they are working on and how effective they have been in seeking out new opportunities.

The individual whom the petitioner now calls its "network engineer" is the same person previously identified as the petitioner's "support engineer." The petitioner had not previously claimed that the network engineer or support engineer was responsible for training the contracted sales force; the previously submitted job description mentioned only "operation and maintenance training including the preparation of training manuals." The record does not include examples of these manuals or evidence of their existence.

More broadly, the record does not support the petitioner's claims regarding the managerial functions of the beneficiary's subordinates. The job descriptions submitted in response to the RFE appear to be based, at least in part, on general templates, parts of which do not appear to apply to the individuals' actual duties. The job description for the support engineer, for example, refers to an "on-call, rotating duty basis" which implies that there are several such personnel working in shifts. The petitioner has no such staff. The petitioner has submitted no documentary evidence to show that the support engineer has traveled to customer locations; that the sales manager participates in professional societies; or that the administrative assistant is responsible for "publication orders." If the submitted job descriptions do not illustrate the employees' actual duties, but instead refer to tasks that they do not perform, then those descriptions have negligible weight as evidence.

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'l Comm'r 1972)). Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The record lacks evidence to corroborate key claims, for example about the petitioner's influence on the design and production of new products at the parent company overseas. Agreements in the record establish the petitioner's use of third-party marketing representatives, but the agreements do not indicate that the petitioner's staff is responsible for training those representatives as the petitioner has newly claimed on appeal.

The job descriptions of the beneficiary and her subordinates are, at times, vague and general. Where the descriptions provide specific information, those assertions are uncorroborated and/or at odds with the evidence of record. For this reason, we find that the petitioner has not met its burden of proof to establish that the beneficiary primarily performs qualifying managerial or executive duties.

III. Conclusion

We will dismiss the appeal for the above stated reasons. 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.