



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF U-A-&C-P-USA, INC.

DATE: DEC. 8, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a publishing company, seeks to employ the Beneficiary in the position of U.S. News, Market and Business Editor (Americas) under the multinational executive or manager immigrant classification. See Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. 1153(b)(1)(C). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The Director's decision will be withdrawn. The matter will be remanded to the Director for further proceedings consistent with this opinion and for the entry of a new decision.

I. THE ISSUES

The Director denied the petition, finding that the evidence of record did not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity. Beyond the decision of the Director, we will also address whether the evidence of record establishes that the Beneficiary was employed abroad in a qualifying managerial or executive capacity for one year in the three years prior to her admission to the United States as a nonimmigrant.

II. 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 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.

(b)(6)

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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.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide, in pertinent part, 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 . . .[.]

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue addressed by the Director is whether the evidence of record establishes that the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity as defined at section 101(a)(44) of the Act.

In denying the petition, the Director found that the Petitioner had not provided a detailed description of the Beneficiary's duties sufficient to establish that the proffered position of [REDACTED] Art Market and Business Editor for the Petitioner's monthly publication would be primarily managerial in nature. Further, the Director found that the Petitioner's organizational chart did not clearly show that the Beneficiary would supervise any employees or manage a function of the organization. The Director acknowledged that the Petitioner's response to a request for evidence (RFE) issued on July 11, 2014 included "a document stating the beneficiary's job duties overseas and in the United States." The decision reflects that the Director did not consider this document in making his determination because it "has no letterhead and does not contain an author or signature of the petitioner."

On appeal, the Petitioner asserts that the document that the Director referenced was submitted as an attachment to a signed letter submitted in response to the RFE and was improperly excluded from consideration. The Petitioner contends that the position description included in this attachment "answers every issue in the denial if it would have been considered." The Petitioner submits a new version of the document on letterhead along with a copy of an e-mail as evidence that the statement submitted in response to the RFE was provided directly by the Petitioner.

(b)(6)

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Upon review, we agree with the Petitioner that the Beneficiary's job description submitted in response to the RFE was improperly excluded from consideration, and that it addresses the Director's concerns regarding the Beneficiary's actual duties and the nature of her supervisory responsibilities. Taking this letter into consideration, the Petitioner has established by a preponderance of the evidence that the Beneficiary's will be employed in a qualifying managerial capacity. While the record shows that the Beneficiary will perform some non-qualifying tasks necessary to produce the Petitioner's publication, such tasks do not automatically disqualify her and are not her primary duties. Whether the Beneficiary is employed in a qualifying capacity turns on whether the Petitioner has sustained its burden of proving that her duties are "primarily" managerial. The Petitioner has met this burden and the Director's decision will be withdrawn.

IV. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

Notwithstanding our decision to withdraw the Director's decision, we are unable to sustain the appeal as a result of evidentiary deficiencies that preclude an affirmative finding of eligibility. Namely, we find that the record lacks sufficient evidence to show that the Beneficiary was employed abroad in a qualifying managerial or executive capacity for one year in the three years prior to her admission to the United States as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B). We review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

The Petitioner submitted a copy of the letter dated June 10, 2011, provided by the Petitioner's United Kingdom parent company to facilitate the Beneficiary's admission to the United States in I nonimmigrant status. The foreign entity's managing director stated that the Beneficiary joined the company's [REDACTED] office in September 2009 in the position of Assistant Editor and, at the time the letter was written, had "recently been promoted to the position of News/Art Market Editor." The record shows that the Beneficiary was granted an I visa in November 2009, and has held H-1B nonimmigrant status since October 1, 2012.

In a letter dated August 13, 2014, submitted in response to the Director's RFE, the foreign entity's managing director stated the Beneficiary was hired by the foreign entity in September 2009, and that she was promoted from assistant editor to News/Art Market Editor "in 2010." In a separate statement submitted with RFE response, which discussed the Beneficiary's duties in the United States, the foreign entity stated that the Beneficiary "moved to America in 2010." The Petitioner submitted a copy of the Beneficiary's federal and New York state tax returns for 2011 and 2012 which indicated that she resided in New York in both years.

Based on the information provided, the record does not establish that the Beneficiary had a full year of employment in a qualifying position with the Petitioner's parent company prior to relocating to a U.S.-based position. As noted, the Beneficiary was hired in September 2009 as an assistant editor, a position which is not claimed to be managerial in nature. The Petitioner has not provided the actual date of her promotion to the claimed managerial position of News/Art Market Editor, and the information provided in the record suggests that the promotion occurred either "in 2010" or during the first half of 2011. Without the exact date of the Beneficiary's promotion, we cannot determine

whether she was employed by the foreign entity in a qualifying capacity for one year prior to her admission to the United States as a nonimmigrant.

In addition, the foreign entity states that the Beneficiary moved to the United States “in 2010,” but does not further specify when she re-located to New York. As such, the record does not contain sufficient evidence to establish that the Beneficiary worked for the foreign entity abroad for one year prior to her admission to the United States as a nonimmigrant.

Overall, the record as presently constituted does not establish that the Beneficiary worked for the foreign entity in the United Kingdom for at least one year in the claimed managerial position, and for this reason, the Petition cannot be approved. We will remand the matter to the Director further proceedings consistent with this discussion.

IV. CONCLUSION

In order to determine whether the Petitioner is eligible for the immigrant classification sought herein, additional evidence pertaining to the Beneficiary’s foreign employment is required. Accordingly, the instant matter must be remanded to the Director for the purpose of allowing the Petitioner the opportunity to supplement the record with evidence that may address the deficiencies described above.

ORDER: The decision of the Director, Texas Service Center is withdrawn. The matter is remanded to the Director, Texas Service Center for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of U-A-&C-P-USA, Inc.*, ID# 14786 (AAO Dec. 8, 2015)