



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUL 27 2015**

FILE #: [Redacted]

PETITION RECEIPT #: [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](http://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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an Arizona corporation that is engaged in the insurance brokerage system and rental of musical instruments. It seeks to employ the beneficiary in the United States as a "broker/manager." 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.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary's position with the U.S. entity would be in a qualifying managerial or executive capacity.<sup>1</sup>

### 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 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 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.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for

---

<sup>1</sup> Although the petitioner's statement on appeal addresses both the beneficiary's former and proposed employment, thus indicating that both issues factored in the denial, a review of the director's decision indicates that only the beneficiary's proposed employment with the petitioning entity served as the chief basis for the unfavorable decision. Accordingly, the primary focus of the discussion at hand will be on the facts that pertain directly to the beneficiary's proposed position.

this classification. 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 a statement must clearly describe the duties to be performed by the alien.

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.

## II. Factual Background and Procedural History

The record shows that the petition was filed on March 18, 2014. The petition was accompanied by a business plan (with a January 2014 commencement period) along with tax, corporate, and business documents pertaining to the U.S. entity.

Following a review of the petitioner's supporting documents, the director determined that the record lacked sufficient evidence to warrant approval of the petition. Accordingly, on August 11, 2014, the director issued a request for evidence (RFE), instructing the petitioner to provide, in part, evidence addressing the beneficiary's proposed employment in the United States. Namely, the director instructed the petitioner to provide an organizational chart illustrating its staffing levels and the beneficiary's detailed job description listing the beneficiary's specific tasks and the percentage of time the beneficiary plans to allocate to each item listed.

The petitioner's response included a statement, dated October 31, 2014, which provided a supplemental job description with a percentage breakdown assigned to the beneficiary's proposed position with the U.S. entity. The petitioner also provided additional evidence in the form of exhibits A-FF.

After reviewing the petitioner's submissions, the director concluded that the evidence of record did not establish that the beneficiary's employment with the U.S. entity would be in a qualifying managerial or executive capacity. Accordingly, the director issued a decision, dated November 28, 2014, denying the petition.

On appeal, the petitioner submits a brief and supporting documents, disputing the director's decision.

Upon conducting a comprehensive review of the petitioner's statements and submissions, we conclude that the petitioner did not provide sufficient evidence to overcome the director's denial. While we consider all evidence on record, we will specifically reference only those documents that are relevant to the beneficiary's proposed position with the U.S. entity. For the reasons stated below, we will affirm the denial of the petition.

## III. Issues on Appeal

As indicated above, the primary issue to be addressed in this proceeding is whether the petitioner provided sufficient evidence to establish that the beneficiary's proposed position with the U.S. entity would be in a qualifying managerial or executive capacity.

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's job duties with the U.S. entity. Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's 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 the context of the

petitioner's organizational structure, its staffing and operational needs, as well as the job duties performed by support personnel.

Turning to the beneficiary's job description, the record contains deficient and inconsistent information that fails to disclose the specific daily tasks the beneficiary would perform in his proposed position. The record shows that the petitioner originally claimed – at Part 6, No. 3 of the Form I-140 – that the beneficiary would "act as [an] insurance broker and real estate broker and [would] oversee all business operations." However, looking to the supplemental job description that the petitioner provided in response to the RFE, it is unclear which job duties represent the beneficiary's responsibilities as an insurance and real estate broker. In other words, the job description focuses on the beneficiary's oversight role, but fails to remain consistent with the original Form I-140 claim, where the petitioner expressly indicated that the beneficiary's role would not be one of strictly overseer, but rather indicated that the beneficiary would also act as an insurance and real estate broker. None of the job duties listed in the supplemental job description included tasks associated with an insurance or real estate broker.

Further, the petitioner indicated that 45% of the beneficiary's time would be allocated to "[c]reating, communicating, and implementing the organization's vision, mission, and overall direction" and "[l]eading the development and implementation of the organization's strategy." The petitioner also indicated that 31% of the beneficiary's time would be allocated to staying aware of "the external and internal competitive landscape, opportunities for expansion, customers, markets, and industry trends and developments." As properly observed in the director's decision, these statements are vague and, thus lack the information necessary to convey a meaningful understanding of the actual tasks the beneficiary would perform on a daily basis within the context of the petitioner's organizational structure. Stating that the beneficiary would have the discretionary authority to define the company's vision and determine what direction the business will take is insufficient and does not distinguish the beneficiary's specific role within the petitioning organization from others employed in other industries and who similarly assume leadership roles in their respective businesses. These statements do not establish that the underlying tasks the beneficiary would undertake are of a qualifying executive nature. The petitioner was similarly vague in failing to define the beneficiary's specific role and the corresponding tasks he would perform in relation to customers, markets, and industry trends and developments. While these elements indicate that conducting marketing analysis and gathering information would be required, the petitioner fails to clarify who within its organizational hierarchy would carry out these operational tasks.

On appeal, the petitioner attempts to add to the deficient job description that was provided in response to the RFE by providing a more detailed list of the beneficiary's job duties. For instance, with regard to the first element to which the beneficiary would allocate 45% of his time, the petitioner broke this down into three specific tasks: weekly meetings with the office manager of the petitioner's insurance business, to which the beneficiary would allocate 20% of his time; weekly meetings with the office manager of the petitioner's music instruments rental business, to which the beneficiary would allocate 10% of his time; and three weekly meetings with the petitioner's administrative assistant, to which the beneficiary would allocate 15% of his time. However, the record shows that the insurance and music rental businesses, while owned by the petitioning entity, are separately incorporated and thus are not part of the petitioning entity itself. While the beneficiary may be tasked with overseeing the two entities, which may be the

petitioner's subsidiaries based on the petitioner's ownership interest in each entity, the key concern in the present matter is the beneficiary's job duties within the immediate petitioning entity. It is therefore the petitioner's organizational composition that is relevant to the discussion at hand, not the organizational compositions of the petitioner's two U.S. subsidiaries.

Accordingly, we now turn to a discussion of the petitioner's organizational hierarchy to determine what operational needs the petitioner seeks to meet and who within its organizational structure performs the operational tasks that are necessary to meet those needs. We find that the petitioner properly points out on appeal that the director unnecessarily focused on the petitioner's failure to establish that the beneficiary would oversee the work of a supervisory, professional, or managerial staff. The director's focus on the beneficiary's management of personnel is misplaced given that managing personnel is an element that is inherent to the definition of the term "managerial capacity," whereas the petitioner claims that the beneficiary would be employed in an executive capacity. However, the petitioner's organizational structure and staffing composition are nevertheless highly relevant, as they address the critical question of whether the petitioner is capable of supporting the beneficiary in a primarily executive capacity.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct[] the management" and "establish[] the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

In the present matter, the record does not establish that the petitioner possesses the organizational complexity that would support the beneficiary in a position that is primarily in an executive capacity. The petitioner indicated (at Part 5, No. 2(c) of the Form I-140) that it had seven employees at the time the petition was filed. However, this information is inconsistent with the petitioner's quarterly tax return for the 2014 first quarter (during which the petitioner filed its Form I-140), which indicates that the petitioner had only two employees at the time of filing. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We further point to the petitioner's failure to comply with the director's request for an organizational chart depicting the petitioner's organizational structure and staffing. While the evidence of record must necessarily support the information that the petitioner offers in an organizational chart, the fact that the petitioner did not provide the requested document further hinders our ability to gain a comprehensive

understanding of how the petitioning entity operates, what the beneficiary's specific role and job duties are within the context of that operation, and who within the organization actually performs the petitioner's daily operational tasks. While it is possible that the petitioner would relieve the beneficiary from having to engage in certain operational tasks by outsourcing them to independent contractors who are not directly employed by the petitioner and thus would not be claimed as the petitioner's employees, the record lacks evidence to support this assertion. 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)).

Accordingly, in light of the various deficiencies described above, we cannot conclude that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. On the basis of this adverse conclusion, this petition cannot be approved.

#### IV. Conclusion

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, that burden has not been met.

**ORDER:** The appeal is dismissed.