



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 04 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:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the preference visa petition. 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 filed Form I-140, Immigrant Petition for Alien Worker (Form I-140), seeking 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 California corporation, is engaged in automobile import and export. The petitioner seeks to employ the beneficiary as its President.

On June 28, 2014, the director denied the petition concluding that the evidence of record did not establish that a qualifying relationship exists between the beneficiary's foreign employer and the petitioner since the foreign employer no longer is in existence. 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):

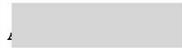
(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(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 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 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).

II. THE ISSUE ON APPEAL: QUALIFYING RELATIONSHIP

At issue in this case is whether the beneficiary's foreign employer still has a qualifying relationship with the petitioner.

In a letter dated August 15, 2013, the petitioner explained that the beneficiary's foreign employer continues to do business in China under a successor organization. The beneficiary was employed abroad by the parent company that was due to expire in 2013. In 2013, after the beneficiary entered the U.S. in L-1A nonimmigrant status, the foreign employer dissolved and a successor in interest was established. The issue is whether the new foreign company is a successor-in-interest to the beneficiary's foreign employer.

There are no statutory or regulatory provisions that address successor-in-interest determinations for employment-based immigrant visa petitions. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto Repair Shop*, 19 I&N Dec. 481 (Comm'r 1986), a binding, legacy Immigration and Naturalization Service (INS) decision that was designated as a precedent by the Commissioner in 1986. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all immigration officers in the administration of the Act.

Matter of Dial Auto does not stand for the proposition that a valid successor relationship may only be established through the assumption of "all" or a totality of a predecessor entity's rights, duties, and obligations. Instead, the generally accepted definition of a successor in interest is broader: "One who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance." Black's Law Dictionary 1570 (9th ed. 2009) (defining "successor in interest").

Upon review of the documentation, the petitioner has established a successor in interest for the foreign company. The petitioner provided documentation demonstrating that the beneficiary's foreign employer was transferred to the successor of interest and it continues to operate the same type of business as the predecessor. The petitioner also provided documentation that the successor has purchased the stocks of the petitioner and is the new parent company of the petitioner. The successor acquired the rights and obligations of the predecessor.

Thus, the petitioner has established a qualifying relationship with the successor in interest parent company located in China. The director's finding to the contrary is hereby withdrawn.

III. ISSUES BEYOND THE DIRECTOR'S DECISION

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 the beneficiary are qualified for the benefit sought, and the appeal cannot be sustained based on the record as presently constituted.

A. Employment Abroad in a Managerial or Executive Capacity

The record contains insufficient evidence to establish that the beneficiary, while employed abroad, 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, noting that the beneficiary was responsible for duties such as the "long-term planning and drafting of business operational and sales requirements" and the "preparation of annual operational and financial plans with Chief Financial Officer." The petitioner also claimed that the beneficiary would "monitor the Company's financial condition as presented by the CFO" and "review, approve and execute major buy-sale contracts with suppliers." 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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 abroad 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 description of the beneficiary's job duties in the U.S. position is vague and unclear. Similar to its description of the foreign position, the petitioner described the beneficiary's U.S. job duties in overly broad terms, claiming that he would be responsible for the oversight of "management and operational infrastructure" and "company sales and marketing development." The petitioner also claimed that the beneficiary "provides guidance and direction to the company on an on-going basis in financial projections and strategic planning." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives, however, 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.

Furthermore, the evidence of record does not include 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. The petitioner submitted an organizational chart that identified the beneficiary as President. According to the chart, the beneficiary as President supervises the following employees: the V.P. of Sales; the Sales Manager; two Purchasing Managers; the V.P. of Operation; the Operation Manager; two Export Managers; the H.R. Manager; the C.F.O.; the Accounting Manager; and a Clerk. However, upon review of Forms W-2 and 1099 for 2012, it appears that the beneficiary only employs the H.R. Manager, the Operation Manager, the Accounting Manager and the V.P. of Operation, and compensates the Purchasing Manager on a contractual basis. In addition, the Accounting Manager received \$3,000 in wages and the V.P. of Operation received \$6,000 in wages for 2012. Thus, it appears that the Accounting Manager and the V.P. of Operations are not working full-time. The petitioner also included Forms 1099 for [REDACTED] and [REDACTED] but did not explain the services of these contracted employees and/or companies and how the contracted parties obviate the need for the beneficiary to primarily conduct the petitioner's business.

As required by section 101(a)(44)(C) of the Act, 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.

At the time of filing, the petitioner had been doing business for approximately four years as an automobile import and export company. It claimed to have a gross annual income of approximately \$2.5 million in 2012. According to its organizational chart, the petitioner employed twelve individuals in positions subordinate to the beneficiary; however, the evidence of record does not establish that the petitioner actually employed all of these individuals as claimed. Specifically, the

record contains evidence of wages paid to only five individuals. One of those individuals is not listed on the petitioner's organizational chart, and two of the individuals, namely, the Accounting Manager and the V.P of Operations, received \$3,000 and \$6,000, respectively, in total wages in 2012, thereby suggesting that they were not employed on a full-time basis. The record also demonstrates that the petitioner's Purchasing Manager is an independent contractor.

The record as currently constituted lacks sufficient evidence establishing that the petitioner employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president, an H.R. Manager, an Operations Manager, a contractual Purchasing Manager, and a part-time Accounting Manager and V.P of Operations. Although positions within the sales, purchasing, and export areas are identified on the organizational chart, there is no evidence demonstrating that these positions are actually staffed, aside from the Purchasing Manager who is not an employee of the petitioner. Given that the petitioner is engaged in the import and export of automobile parts, it is reasonable to expect that the services of individuals in this area would be essential to the petitioner's business operations. The lack of evidence establishing that the petitioner has a subordinate staff to perform the essential sales and export duties is significant, since the record demonstrates that the petitioner has been doing business in the United States for nearly four years.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Overall, the record is insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States.

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 June 28, 2014 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.