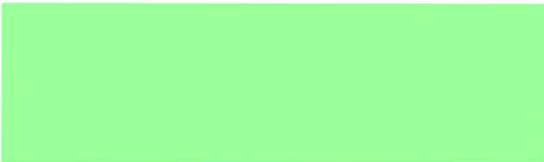




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE:

OFFICE: TEXAS SERVICE CENTER

FILE:

MAR 27 2013

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation that seeks to employ the beneficiary in the United States as its president. 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.

In support of the Form I-140 the petitioner submitted a statement dated March 4, 2011, which contained relevant information pertaining to the petitioner's eligibility, including a job description of the beneficiary's proposed employment with the petitioning entity. The petitioner indicated that the beneficiary would focus her time on the petitioner's budget and finances, improving company performance by setting policies to meet objectives and reduce costs, and directing activities dealing with pricing, sales, and distribution of merchandise. The petitioner indicated that at the time of filing the beneficiary was at the top of an organizational hierarchy that included a sales manager, a logistics manager, an assistant sales manager, a sales person, a warehouse manager, and a warehouse assistant.

The director reviewed the petitioner's submissions and determined that an approval was not warranted. The director therefore issued a request for evidence (RFE) dated August 26, 2011 informing the petitioner of various evidentiary deficiencies. Among the issues the director addressed was that of the beneficiary's proposed employment with the U.S. entity. Specifically, the director instructed the petitioner to provide a detailed organizational chart illustrating its company structure. The petitioner asked that the chart be complete with employee names, job titles, and position descriptions. The director also questioned whether a support staff of five employees would be sufficient to support the beneficiary in a primarily managerial or executive capacity and relieve her from having to allocate her time primarily to the performance of non-qualifying tasks. The director stressed that the burden is on the petitioner to provide documentation establishing its reasonable needs with respect to staff and organizational structure.

In response counsel restated the beneficiary's original job description as contained in the initial letter of support and also included the job descriptions of the remaining five employees. The petitioner also provided a Florida State quarterly wage document accounting for the time period during which the petitioner filed the Form I-140. Of the seven employees named in the wage report and the petitioner's organizational chart, one employee—the individual named as the warehouse assistant—was shown as having received no wages during the time period in question. Additionally, the wages paid to the petitioner's warehouse manager were not indicative of wages paid to a full-time employee. Alternatively, it is possible that [REDACTED] the warehouse manager, was not employed during the entire three-month quarter, thus leading to the possibility that he was not working for the petitioner in April 2011 when the petition was filed. Based on information contained with the petitioner's quarterly tax return for the following quarter, it appears that the petitioner's staffing size decreased from six to five employees.

After considering the evidence submitted into the record, the director determined that the petitioner failed to establish that the beneficiary would be employed with the U.S. entity in a qualifying managerial or executive capacity. The director therefore issued a decision dated December 20, 2011 denying the petition.

On appeal, counsel provides a brief in which she challenges the director's decision and asserts that the beneficiary would be employed in an executive capacity. Counsel further contends that the petitioner's six-

person staff is sufficient to support the beneficiary in an executive capacity position and offers additional information regarding the beneficiary's proposed employment to support her assertions.

The AAO has reviewed the record in its entirety and finds that counsel's assertions are not persuasive in overcoming the director's finding of ineligibility. The AAO will fully address the petitioner's eligibility and counsel's statements in the discussion below.

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.

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 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

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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.

Turning to the primary issue at hand—the beneficiary's employment capacity in her proposed position with the U.S. entity—the AAO will first look to the petitioner's description of the beneficiary's proposed job duties. See 8 C.F.R. § 204.5(j)(5). While other factors are also considered, published case law supports the pivotal role of a detailed job description, as the actual duties themselves 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); see also 8 C.F.R. § 204.5(j)(5).

In the present matter, the AAO finds that the job description that was originally provided by the petitioner (and which was subsequently resubmitted by counsel in response to the RFE) was overly vague and offered a general overview of the beneficiary's position and level of authority rather than a detailed list of the beneficiary's actual daily tasks. For instance, the petitioner indicated that the beneficiary would allocate 24 hours per week to meeting the following objectives: directing and coordinating finance and budget activities, maximizing on investments, promoting efficiency, evaluating company and staff performances, determining ways to improve programs and cut costs, and directing and implementing organizational policies and objectives with the goal of maximizing returns on investments and increasing productivity.

While all of the above statements serve as indicators of the beneficiary's top placement within the petitioner's organizational hierarchy as well as her high level of discretionary authority, these factors alone are not sufficient to convey relevant information about the specific means, i.e., the actual daily tasks the beneficiary would perform in order to attain the broadly stated business objectives listed above. The AAO cannot assume that the beneficiary primarily performs tasks of a qualifying nature simply because she serves as head of the petitioning organization. If the AAO were to make such assumptions in every scenario where the beneficiary

occupies the senior-most position within an organization, there would be no need to review the job duties at all. However, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations expressly require a detailed description of the beneficiary's daily job duties. See 8 C.F.R. § 204.5(j)(5). Thus, 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. *Id.*, 1103.

While a portion of the beneficiary's job description included few detailed statements, which indicate that the beneficiary would prepare budgets and negotiate contracts and agreements with suppliers and distributors, these job duties more accurately fit the heading of operational or administrative tasks and cannot be deemed to be tasks of a qualifying nature. Additionally, counsel states on appeal that the beneficiary would be engaged in travel for the purpose of meeting potential suppliers and new clients. However, these statements also indicate that there is a non-qualifying sales component that is inherent to the proposed position. That being said, the AAO acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks. However, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. 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 *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In the present matter, where the beneficiary's job description is primarily comprised of statements that fail to reveal specific tasks the beneficiary would perform on a daily basis, the AAO cannot affirmatively conclude that the beneficiary would allocate her time primarily to the performance of tasks within a qualifying managerial or executive capacity. While the AAO often looks to other relevant factors, including the petitioner's organizational hierarchy and staffing, in order to gauge a company's ability to relieve the beneficiary from having to primarily perform non-qualifying tasks, these factors must be considered within the context of a well-defined job description. As the latter key element is missing from the instant record, the AAO cannot conclude that the petitioner would employ the beneficiary in a qualifying managerial or executive capacity and on the basis of this conclusion, the instant petition must be denied.

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.

ORDER: The appeal is dismissed.