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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **MAY 30 2013** OFFICE: TEXAS SERVICE CENTER FILE: [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]

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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Texas corporation that seeks to employ the beneficiary in the United States as its chief financial officer. 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 February 22, 2012, which contained relevant information pertaining to the petitioner's eligibility, including a discussion of the beneficiary's proposed employment with the petitioning entity. The petitioner indicated that the beneficiary would be responsible for overseeing and optimizing the petitioner's financial well-being, meeting with and reporting to the board of directors regarding the petitioner's finances and future financial plans, setting and administering budgets, overseeing and managing vendor relations, and managing employees in the accounting and finance departments. The petitioner also provided supporting evidence in the form of corporate, financial, and business documents.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for evidence (RFE) dated May 22, 2012 informing the petitioner of various evidentiary deficiencies. The RFE addressed a number of eligibility factors, including the beneficiary's proposed employment with the petitioning entity. Specifically, the director instructed the petitioner to list the beneficiary's specific daily job duties and to indicate the percentage of time the beneficiary would allocate to each task on the list. The director also asked that the petitioner submit its organizational chart depicting the beneficiary's subordinates, their job titles, brief job descriptions and their respective educational levels and to support this information by providing the petitioner's federal quarterly tax return for the first quarter of 2012.

The petitioner's response included a statement dated July 27, 2012 from [REDACTED] the petitioner's president and CEO, who provided broad statements claiming that the beneficiary would establish goals and policies concerning administration, research, product planning, and investment; exercise wide latitude in discretionary decision-making; establish business policies; and have full authority to hire and fire employees as well as assess their individual performances. [REDACTED] continued with a vague list of responsibilities, stating that the beneficiary would establish and monitor management and organizational procedures, information systems, and budget; direct resource planning activities and changes to management, procedures, and budget limits; attend meetings with industry associations to stay informed of regulatory changes; and negotiate and execute contracts. Lastly, [REDACTED] stated that the beneficiary would be responsible for establishing annual and monthly business objectives, providing the board of directors with an annual sales plan and quarterly updates, and directing and coordinating specific business plan objectives with the company's various departments. [REDACTED] generally indicated that the beneficiary would "spend 100% of her time in her *executive* duties as CFO." (Emphasis added in original).

In addition to the beneficiary's job description, [REDACTED] provided job descriptions for the employees named in the petitioner's organizational chart and indicated that the company's administrative, sales, warehousing, and logistics managers all report directly to the beneficiary. It is noted that, despite the

director's express request for a delineation of the beneficiary's specific daily tasks with time allocations assigned to individual tasks, the petitioner provided a job description that focused on the beneficiary's broad job responsibilities and lacked a detailed list of tasks or the requested time allocations. Additionally, while the AAO acknowledges the petitioner's submission of its Texas Sales and Use Tax Return for the 2012 first quarter, the record shows that the director expressly instructed the petitioner to provide its federal quarterly tax return (IRS Form 941) for the 2012 first quarter and that document was not provided with the petitioner's response to the RFE.

After considering the petitioner's response, the director determined that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. The director determined that the petitioner failed to provide an adequate job description listing the beneficiary's specific daily job duties. The director also found that the petitioner lacks the organizational complexity to allow for the employment of an individual who would primarily perform tasks within a qualifying managerial or executive capacity. In light of these adverse findings, the director issued a decision dated September 18, 2012 denying the petition.

On appeal, counsel provides an appellate brief in which he disputes the director's findings. Counsel asserts that the director erroneously subjected the petitioner to criteria that are common to an L-1 nonimmigrant petition, which seeks to continue the beneficiary's period of employment in a new office. Counsel points out that the petitioner in this matter of an immigrant petition does not have the burden of establishing that the petitioner's non-qualifying duties "have been transferred to locally employed personnel, working in actual physical offices." Counsel also contends that the director placed undue focus on the petitioner's description of the beneficiary's proposed employment and failed to consider the totality of the evidence, including the job descriptions of the beneficiary's subordinates.

After having conducted a comprehensive review of the record, the AAO finds that counsel's assertions are not persuasive and fail to overcome the basis for denial. A full analysis of the director's decision and the petitioner's supporting evidence is provided 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 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.

In general, when examining the executive or managerial capacity of the beneficiary, the AAO reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). Federal case law has fittingly determined that a detailed job description is a crucial factor in determining the petitioner's eligibility, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). The AAO will then consider the job description in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the business conducted by the entities in question, the size of the subordinate staff of the foreign and U.S. entities, and any other facts contributing to a comprehensive understanding of the beneficiary's actual roles in the two respective entities.

Applying the above criteria to the matter at hand, the AAO first turns to the beneficiary's job description, which was offered in response to the RFE. The AAO finds that the director was correct in finding that the job description lacked the requisite degree of detail clarifying what specific tasks the beneficiary would perform on a daily basis. As noted above, the petitioner failed to follow the detailed format that was specifically requested by the director in the RFE, opting to provide only general statements that consisted of little more than paraphrased portions of the statutory definitions of managerial and executive capacity. The general statements contained little substance or meaningful information that would allow the AAO to make a determination as to the nature of the proposed employment.

The AAO further notes that while [REDACTED] reiterated the claim that the beneficiary's prospective employment would be in an executive capacity, he provided a hybrid discussion of an "executive/manager" and relied on partial sections of the two statutory definitions, thus failing to remain consistent with the original claim. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. Here, [REDACTED] discussed the beneficiary's policy-making role and discretionary authority, which are consistent with the definition of executive capacity; at the same time, [REDACTED] pointed to the beneficiary's supervisory role with respect to subordinate employees, which is an aspect that is more common to someone employed in a managerial capacity. While an individual employed in an executive capacity directs the management of an organization or an aspect of the organization through other employees, that individual's supervisory responsibilities would not comprise the main portion of the position.

In the present matter, despite claims that the beneficiary would be employed in an executive capacity, both the job description and the petitioner's organizational chart, which depicts the beneficiary in a supervisory role overseeing the work of five employees, indicate that the beneficiary would not be employed in an executive capacity. While this determination does not preclude the AAO from considering the beneficiary's position under the statutory definition of managerial capacity, as noted previously, the petitioner has simply failed to provide sufficient substantive information to allow the AAO to gain a meaningful understanding of what the beneficiary's actual daily tasks would be and how much of her time would be allocated to the performance of qualifying tasks versus those that are not qualifying. In the present matter, the petitioner

failed to identify any specific policies the beneficiary made or how her policy-making role translates into daily tasks. The petitioner has been similarly vague in its failure to clarify how, i.e. by what means, the beneficiary establishes and manages management and organizational procedures, information systems, and budgets.

Furthermore, turning back to the beneficiary's original job description, which was included in the petitioner's supporting statement dated February 22, 2012, the petitioner stated that the beneficiary would be responsible for overseeing and managing vendor relations and performing many of the non-qualifying tasks associated with her financial planning role, which would include developing budgets and disbursing and accounting for the company's revenues. Despite the petitioner's reference to an accounting and finance department, whose employees the beneficiary would be tasked with overseeing, the petitioner's organizational chart does not include an accounting and finance department, thus indicating that the beneficiary herself would assume any operational tasks that concern matters of accounting and finances. While no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks must be incidental to, rather than the primary aspect of, 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 summary, counsel's assertions, which attempt to persuade the AAO to place less emphasis on the beneficiary's job descriptions, fail to address the valid issue at hand—the petitioner's overall failure to provide evidence that would establish that the beneficiary's time would be primarily allocated to the performance of qualifying managerial- or executive-level tasks. Looking to the petitioner's organizational hierarchy, the AAO, like the director, observes the lack of complexity in the petitioner's organizational hierarchy where the beneficiary is depicted in a supervisory role overseeing the sales and warehousing employees who would perform the petitioner's daily operational tasks. While the AAO has observed the educational levels of the beneficiary's subordinates, merely establishing that these individuals possess baccalaureate degrees is not sufficient to establish that such degrees are prerequisites for the administrative, sales, and warehousing managers' positions, or that these are professional employees, despite their respective position titles. In evaluating whether the beneficiary manages professional employees, the AAO must focus on the level of education required by the position, rather than the degree actually held by a subordinate employee.

Lastly, the AAO is unpersuaded by counsel's repeated references to L-1 nonimmigrant regulations and the director's erroneous application of the nonimmigrant criteria pertaining to an L-1 nonimmigrant petition seeking to continue a beneficiary's period of employment in a new office. As a general principle, in order to merit approval of the immigrant petition filed in the present matter, the petitioner must establish that the petitioner has the human resources to relieve the beneficiary from having to allocate her time primarily to the performance of non-qualifying operational tasks. This requirement is common to both an L-1 petitioner and the petitioner who files an immigrant petition seeking to permanently employ the beneficiary as a multinational manager or executive. While there is no express requirement for the petitioner to establish that the non-qualifying duties of its organization "have been transferred to locally employed personnel, working in actual physical offices," the director can and should look to the petitioner's staffing and organizational

complexity in order to determine who within the petitioner's organization was available to perform the petitioner's non-qualifying operational tasks at the time the Form I-140 was filed. Even in instances where an adequate job description is provided, the AAO finds it reasonable to look to the petitioner's organizational complexity and staffing in an effort to determine whether other evidence in the record corroborates the claims made in the job description.

In the present matter, the petitioner has offered several insufficient job descriptions pertaining to the proposed employment and has provided an organizational chart that does not further the petitioner's claim that the petitioner was able to employ the beneficiary in a qualifying managerial or executive capacity at the time the petition was filed. In light of the insufficient evidence submitted to support the petition, the AAO concludes that the petitioner has failed to establish that the beneficiary would be employed in a qualifying capacity as claimed and on the basis of this finding the 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.