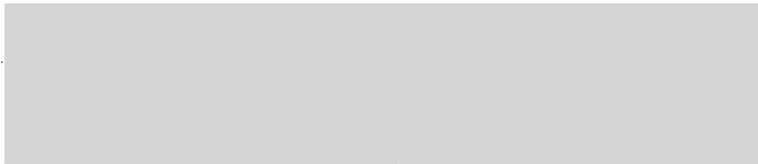


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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090

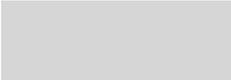


U.S. Citizenship  
and Immigration  
Services

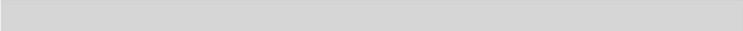


DATE: **APR 08 2015**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

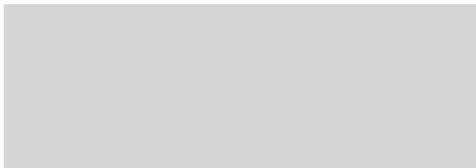
IN RE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg

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 multinational corporation operating luxury hotels worldwide. The petitioner seeks to employ the beneficiary in the United States in the position of residential director of outlets. 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 a decision dated January 17, 2014, the director denied the petition based on the finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

On appeal, the petitioner disputes the director's adverse findings and submits a supplemental brief discussing the beneficiary's former position with the foreign employer.

### 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 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.

## II. Factual Background and Procedural History

The record shows that the petition was filed on March 19, 2013. The petition was accompanied by supporting corporate and financial documents as well as the petitioner's supporting statement, dated March 4, 2013, signed by [REDACTED] vice president of the human resources. [REDACTED] stated that the beneficiary's former position as room service manager based with the petitioner's group in Ireland involved oversight of twelve employees, including four assistant managers and subordinate supervisors. She also provided a list of the beneficiary's key responsibilities:

- Oversaw the selection, training, evaluation and discipline of all employees in the Hotel's Room Service Department to ensure that established cultural and core standards were met;
- Directed the responses to and handling of guest, client and group contract complaints, concerns, and special requests in order to maintain good public relations;
- Liaised with the Assistant Director of Food and Beverage, Director of Food and Beverage, Executive Chef and Sous chef to design quality products at a fair price for guests;
- Participated in regular meetings to ensure effective coordination and cooperation between departments;
- Ensured the provision of and availability of information regarding high quality food items, ingredients as well as wine and spirits that were available to guests for in-room dining and in-room private bar services on a 24 hour a day basis;

- Controlled departmental labor and operating expenses through effective scheduling, budgeting, purchasing decisions and inventory and cash control; and
- Monitored physical conditions of the facilities and equipment utilized by departmental staff to ensure hotel standards and guest expectations were met.

The petitioner submitted an organizational chart for the [REDACTED] Ireland hotel depicting the beneficiary as room service manager with two direct subordinates with the job title "room service supervisor." The chart showed that these employees supervised two "ad hoc supervisors/coordinators" who, in turn, supervised a staff of eight "room service servers/private bar attendants."

On September 13, 2013, the director issued a request for evidence (RFE), in which the petitioner was instructed to provide a detailed description of the beneficiary's former position listing the beneficiary's daily job duties and the percentage of time allocated to each of his assigned tasks. The director also asked the petitioner to provide: (1) the foreign entity's organizational chart with sufficient detail to adequately illustrate the beneficiary's former position relative to other employees; and (2) the names and detailed job descriptions of the beneficiary's immediate supervisor and subordinate employees at his former position abroad.

The petitioner's response included a statement, dated November 26, 2013, from [REDACTED]. The statement included a list of the beneficiary's former job duties and their respective time allocations. The petitioner supplemented the statement with the foreign entity's organizational chart and company generated job descriptions of the beneficiary's supervisor – director of food and beverage – as well as job descriptions of the beneficiary's position and those of the room service supervisor, room service coordinator/order taker, and room service server/overnight room service server.

[REDACTED] letter provided the following description of the beneficiary's core responsibilities and day-to-day tasks:

- Oversaw selection, training, evaluation and discipline of Room Service Employees (Day-to-day tasks included interviewing and reviews, and testing on core standards) – 10%
- Exercised discretionary authority in directing subordinates in methods of responding to guest requests and handling guest complaints, concerns, and special requests. (Day-to-day tasks included ensuring order taking and delivery were correct; ensuring meetings rooms were correctly set up) – 20%
- Liaised directly with other senior-level Food and Beverage managers to develop quality products for guests at fair prices (Daily tasks included checking on food quality and bringing new products to the department offerings) – 10%
- Participated in hotel-wide manager meetings to discuss and implement effective coordination and cooperation strategies between departments (Day-to-day tasks included attending BEO, Labor, Board of Operations and Department meetings) – 20%
- Monitored and analyzed guest preferences and activities so that quality [food] and beverage offerings and services were available for in-room dining and in-room private bar services. (Day-to-day tasks included weekly meeting with chef, liaison with group contacts, and liaison with vendors) – 20%

- Exercised discretionary authority to control departmental labor and operating expenses (Day-to-day tasks included preparing and checking schedules) – 10%
- Manage subordinate employees in the proper maintenance of equipment and facilities utilized by Room Services staff (Day-to-day tasks included training in department, coaching meetings, and standards tests) – 10%

The internally-generated description of the Room Service Manager position listed the basic purpose of the position as to "plan, organize, control and direct the work of employees in the Room Service Department while ensuring guest satisfaction." The duty description listed eight "essential functions" as follows:

1. Select, train, evaluate, lead, motivate, coach and discipline all employees in the Hotel's Room Service Department . . . (20%)
2. The ability to be visible in the operation, provide recognition, promote good public relations, and handle complaints, concerns or special requests for guests, clients, and group contacts. (20%)
3. Describe and ensure quality of all food items, ingredients, and preparation methods, as well as provide knowledge of wine and spirits in an elegantly appointed environment . . . (10%)
4. The ability to work closely with the Assistant Director of Food & Beverage, Director of Food & Beverage, Executive Chef and Sous Chefs to design effective menu and amenity options while ensuring excellent product quality at a fair price and attend regular operational meetings . . . . (10%)
5. Control labor and operating expenses through effective scheduling, budgeting, purchasing decisions, and inventory and cash control. (10%)
6. Observe physical condition of facilities and equipment in the outlet and make recommendations for corrections and improvements as needed. (10%)
7. Comply with [the company's] Category One and Category Two Work Rules and Standards of Conduct as set forth in EmPact. (10%)
8. Work harmoniously and professionally with co-workers and supervisors. (10%)

The description indicated that the Room Service Manager's "non-essential functions" included assisting with the service of food to guests and assisting with the cleaning of operational areas.

The petitioner submitted a position description for the Room Service Supervisor position in the same format. The job description for this position indicated that the position's basic purpose is to "serve guest needs by providing exceptional knowledge of food & beverage menu items as well as information regarding preparation methods." The essential duties of the room service supervisor include delivering food orders, checking completed kitchen orders with the order taker, transporting items to guestrooms, greeting guests and describing selected items, responding to requests for tray removal, breakdown and set-up of room service tables, and closing guest checks. The description indicated that the room service supervisor assigns tasks to servers and private bar attendants and checks work of employees assigned during his/her shift as "non-essential functions." The description indicates that the number of employees supervised by this position is "None."

After reviewing the petitioner's submissions, the director determined that the petitioner failed to establish that the beneficiary's position abroad was in a qualifying capacity. The director reviewed the information provided with regard to the beneficiary's former position, as well as the positions of his direct and indirect subordinates, and concluded that the beneficiary was a first-line supervisor of non-supervisory and non-professional employees. The director also pointed to a discrepancy between the originally submitted organizational chart, which showed the beneficiary directly overseeing the work of two room service supervisors whose positions were depicted above two ad hoc supervisors/coordinators, and the chart submitted in response to the RFE, which showed the beneficiary overseeing two room service supervisors, who in turn were responsible for overseeing the work of two additional room service supervisors.

On appeal, the petitioner reasserts its prior claim that the beneficiary was charged with overseeing a department comprised of twelve employees, including two room service supervisors, whom the beneficiary managed directly. The petitioner focuses on the hierarchy of the room service department and contends that the director unduly focused on the company generated job descriptions that were provided with the RFE response without giving ample consideration to the beneficiary's own job description, which was included in [redacted] response statement.

Upon review, and for the reasons stated below, we find that the petitioner has failed to establish that the beneficiary was employed abroad in a qualifying managerial capacity.

### III. The Issue 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 was employed abroad in a qualifying managerial capacity. The petitioner does not claim that the beneficiary's position of Room Service Manager was in an executive capacity.

In order to make this determination, we conduct a comprehensive analysis of the record, starting with review of the beneficiary's job duties, as 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 employing entity's organizational structure, as well as the job duties, educational credentials, and position requirements of the beneficiary's subordinates.

In the present matter, while the petitioner's RFE response statement included a percentage breakdown of the beneficiary's job duties abroad, it is unclear why that job description is inconsistent with the company generated job description offered with regard to the same position. For instance, the RFE response statement indicates that 10% of the beneficiary's time was allocated to overseeing, selecting, and evaluating room service employees and that 20% was allocated to directing subordinates in responding to guest requests and handling customer complaints. However, the company generated job description indicates that 20% of the beneficiary's time was allocated to selecting, training, evaluating, and leading employees in the room service department and another 20% of his time was allocated to promoting good public relations, handling complaints, and addressing special requests for guests, clients, and group contacts. The latter description indicates that the beneficiary, rather than his subordinates, assumed the customer service-related job duties

and is also inconsistent with the RFE statement description in terms of the amount of time that was allocated to oversight, selection, and evaluation of employees. Further, while the RFE response statement indicates that the beneficiary "[I]nteracted directly with other senior-level Food and Beverage managers to develop quality products for guests," the petitioner did not clarify that this was synonymous with the company generated job description, which indicated that 10% of the beneficiary's time was allocated to describing and ensuring food quality and knowledge of wine and spirits. The petitioner did not establish that the operational tasks listed in the company-wide description are of a managerial or executive nature.

In addition, the company generated job description did not indicate that the beneficiary allocated 20% of his time to participating in hotel-wide manager meetings and 20% to monitoring and analyzing guest preferences by attending weekly meetings with the chef and communicating with group contacts and vendors. While it appears that the job description that was contained in the RFE response statement addressed the director's request for a detailed list of the beneficiary's job duties, it is unclear why this job description is inconsistent with the one that was internally generated or why the petitioner would submit the internally generated job description if it contends that the latter is an inaccurate depiction of the beneficiary's former position. 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).

On appeal, the petitioner requests that we focus on the job description provided by the HR vice president, but it fails to explain why the company generated job description is an inaccurate portrayal of the beneficiary's former employment. Therefore, the petitioner fails to resolve the inconsistencies between the two job descriptions pertaining to the beneficiary's former position with the foreign entity. The petitioner also failed to resolve inconsistencies between the organizational chart submitted originally in support of the petition and the chart submitted later in response to the RFE. As noted in the director's decision, the two charts were inconsistent with regard to the subordinate staff that comprised the food and beverage department where the beneficiary assumed his position as room service manager. Although the petitioner's appellate brief focuses entirely on the organizational chart that the petitioner originally submitted, the petitioner fails to explain why the organizational chart that was submitted in response to the RFE conveyed information that was inconsistent with the originally submitted chart. *See id.*

Next, with regard to the director's finding that the beneficiary's subordinate staff was not comprised of supervisory, professional, or managerial employees, the petitioner asserts that the director placed "undue emphasis" on the company generated job descriptions, claiming that these are "standard company job descriptions," whose focus is on "'service' tasks" rather than on an employee's supervisory or managerial role. This explanation, however, is insufficient and is not supported by any corroborating evidence. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Furthermore, the record shows that the director was clear in requesting that the petitioner provide detailed job descriptions pertaining to the beneficiary's subordinates. The director had no choice but to consider the only job descriptions that the petitioner provided in the RFE response with regard to the beneficiary's subordinates.

If, as claimed on appeal, the "generic corporate job descriptions" did not constitute an accurate depiction of the actual job duties the beneficiary's subordinate employees performed during his employment abroad, it is unclear why the petitioner did not provide more accurate job descriptions or why the petitioner provided the allegedly inaccurate company generated job descriptions to begin with. Moreover, the petitioner failed to explain why the standard, company-wide job descriptions were not accurate portrayals of the positions within the foreign entity's organizational hierarchy.

While the petitioner offered organizational charts that generally depicted the beneficiary's former position at the top of a departmental hierarchy with at least two levels of supervisory employees in positions that were subordinate to the beneficiary, we cannot focus entirely on two inconsistent organizational charts and exclude the job descriptions that the petitioner provided in the RFE response, which failed to corroborate the information that the petitioner attempted to convey in either chart.

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 204.5(j)(4). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 204.5(j)(2). As previously stated, the petitioner failed to provide sufficient evidence to establish that the beneficiary's subordinate staff consisted of supervisory, professional, or managerial employees. The position descriptions submitted for the subordinate room service supervisors and coordinators reflected that these employees had only nominal supervisory duties, such as assigning tasks, among their "non-essential functions" and were not considered to have subordinate employees.

Further, the petitioner's claim that the beneficiary's former position meets the requirements of both a personnel and a functional manager is inconsistent with the intended application of the latter term, which generally applies when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Here, the petitioner provided two organizational charts and made claims in an effort to establish that the beneficiary is a personnel manager. Further, for the reasons discussed above, the petitioner has not submitted consistent description of the beneficiary's duties sufficient to establish that the beneficiary performed primarily managerial duties associated with the room service function. In fact, the information provided in the petitioner's statement in response to the RFE indicated that the beneficiary spent 50% of his time on personnel matters such as interviewing, testing, training, coaching, overseeing performance of duties, and preparing and checking employee schedules, duties which must be considered non-qualifying in the absence of evidence that the beneficiary supervised subordinate managers, supervisors or professionals. While we do not doubt that he exercised discretion over room service matters and personnel, the record does not reflect that he performed primarily managerial duties.

The entirety of the record shows that the petitioner failed to provide sufficient evidence to resolve the inconsistency between two differing organizational charts or to establish that the beneficiary's employment



abroad consisted primarily of tasks within a qualifying managerial capacity. The petitioner also offered inconsistent job descriptions for the beneficiary's own position. While the petitioner asks that we focus on the job description contained within the statement provided by its HR vice president, the petitioner provided no explanation as to why the company itself would choose to issue job descriptions that fail to properly disclose the beneficiary's key tasks and responsibilities. In light of the significant deficiencies highlighted in this decision, we find that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial capacity and on the basis of this adverse finding, 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, in light of the findings issued in the director's decision and the additional finding issued by this office, that burden has not been met.

**ORDER:** The appeal is dismissed.