



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 16 2015** 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 (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. 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is an investment firm that was incorporated in the State of Delaware in [REDACTED]. It seeks to hire the beneficiary in the position of financial 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. In a decision dated June 14, 2014, the director determined that the petitioner failed to establish that it has the ability to pay the beneficiary's proffered wage and denied the petition on the basis of that conclusion.

On appeal, the petitioner disputes the director's conclusion and provides additional evidence. After reviewing the record in its entirety, we find that the petitioner has overcome the director's sole ground for denial. Therefore, the director's decision denying the petition on the basis of failure to establish the ability to pay is hereby withdrawn.

Notwithstanding the petitioner's success in overcoming the director's decision, the record indicates that the petitioner may be ineligible for the immigration benefit sought herein on the basis of other grounds that were not addressed by the director either in his request for evidence (RFE) or in the denial itself. Namely, we find that the record fails to establish that the beneficiary was employed abroad or that she would be employed in the United States in a qualifying managerial or executive capacity.

Turning first to the beneficiary's proposed employment in the position of financial analyst, we look to the petitioner's supporting statement, dated February 10, 2014, which includes a job description and percentage breakdown showing how the beneficiary would allocate her time among her various responsibilities. In reviewing the seven elements that comprise the beneficiary's proposed position as well as the respective time allocations assigned to each element, we cannot conclude that the beneficiary would spend her time primarily performing tasks of a qualifying managerial or executive nature. We note that merely establishing that the beneficiary performs tasks at a professional level is not sufficient unless those tasks rise to the level of managerial or executive capacity.

Further, while the petitioner named the three employees whom the beneficiary would supervise, the beneficiary's job description does not allocate any time to employee supervision, thus resulting in what appears to be an inconsistency between the beneficiary's job description and the assertions following the job description – both contained within the same supporting statement.

Lastly, we observe that the first page of the petitioner's supporting statement indicates that the beneficiary is being "temporarily transferred" to work for the U.S. entity for two years. This claim is problematic for two reasons. First, the claim that the beneficiary's transfer is only temporary is at odds with the purpose of this employment-based immigrant petition, which is to permanently, rather than temporarily, transfer the beneficiary to work in the United States in the proposed position. Second, the claim is inconsistent with information provided at Part 6, No. 6 of the Form I-140, which indicates that the proposed position is permanent. 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).

Next, turning to the beneficiary's employment abroad, we find that the beneficiary's position with the foreign entity is described in broad terms and includes no specific job duties or clarifying statements explaining how the beneficiary was able to meet her broadly stated job responsibilities. A detailed description of actual daily job duties is crucial, as the 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).

Accordingly, this matter will be remanded for a new decision, which shall take proper notice of the beneficiary's duties and the duties of his subordinates. The director may issue a notice requesting any additional evidence consistent with deficiencies discussed above and any other evidence he deems necessary to determine the petitioner's eligibility for the immigration benefit sought herein.

ORDER: The decision of the director dated June 14, 2014 is hereby withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.