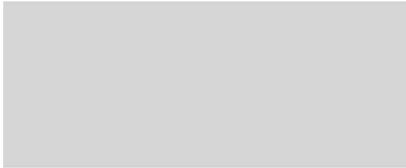


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 27 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](http://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,

A handwritten signature in black ink, appearing to be "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center denied the immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner filed an Immigrant Petition for Alien Worker (Form I-140) 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. The petitioner is a U.S. entity that operates as a provider of web-based business software solutions. The beneficiary previously worked as a senior consultant for the petitioner's Canadian subsidiary and the petitioner now seeks to employ the beneficiary in the United States as a principal consultant in its professional services department.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity.

### 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. Facts and Procedural History

The record shows that the petition was filed on October 28, 2013 and was accompanied, in part, by the petitioner's supporting statement, dated October 15, 2013, in which the petitioner discussed the beneficiary's foreign and proposed employment. The petitioner indicated that the beneficiary was employed in Canada in the position of senior consultant, from November 2010 to April 2012, prior to being transferred to the United States to assume his current/proposed position. The petitioner stated that the beneficiary assumed managerial responsibility over the company's User Acceptance Testing Tool (UAT). More specifically, the petitioner claimed that the beneficiary "conceptualized, created and managed the development of the UAT tool," which included overseeing "the design and development of all enhancements to this essential tool on an ongoing basis." In addition, the petitioner stated that the beneficiary "successfully conceptualized and designed the Retail Method of Accounting solution" for one of the company's customers and further indicated that the beneficiary "was actively engaged as a [s]olution [a]dviser" for the company's product management team. The petitioner also claimed that the beneficiary had "primary managerial responsibility" over one of the company's customer implementation projects. The petitioner went on to provide a percentage breakdown of the job duties the beneficiary performs in his current role as principal consultant in the petitioner's professional services department, and submitted a number of exhibits to corroborate his stated duties in this role.

On June 11, 2014, the director issued a request for evidence (RFE), informing the petitioner that the record lacked sufficient evidence of the petitioner's eligibility. Among the issues noted in the RFE was the beneficiary's former employment with the entity abroad. The director noted that the petitioner's initial supporting statement included two claims that are at odds with one another. Namely, the director pointed out

that while the petitioner claimed that the beneficiary assumed only an entry-level management position with the foreign entity, he nevertheless exercised a high level of discretionary authority over an essential function, i.e., the UAT. Accordingly, in an effort to determine whether the beneficiary was employed abroad in a qualifying managerial or executive capacity, the director instructed the petitioner to supplement the record with a letter from the foreign organization listing the beneficiary's actual job duties and the percentage of time the beneficiary spent carrying out each activity listed. The petitioner was also asked to list the beneficiary's supervisors and employees (including contractors) within the beneficiary's immediate division or team, and to provide their respective job descriptions, educational levels, and position requirements. In addition, the petitioner was asked to provide the foreign entity's organizational chart depicting its overall structure and staffing levels, the beneficiary's position, and a list of the employees and contractors who worked with the beneficiary's team.

In response, the petitioner provided the statement it recently submitted in response to an RFE associated with its filing of an L-1A nonimmigrant petition on the beneficiary's behalf. The petitioner also instructed the director to refer to its original supporting statement, dated October 15, 2013. In addition, the petitioner provided a company-generated document entitled "Professional Services Individual Contributor Job Family," which listed the key job responsibilities, contributions, and technical requirements for the roles of analyst, consultant, senior consultant, and principal consultant within the petitioner's multinational organization. In a separate document, entitled "PS Job Description," the petitioner provided a more general job description of the organization's senior consultant. Lastly, with regard to the director's request for an organizational chart, the petitioner provided a chart naming a director as head of the department, followed by the beneficiary – in his current U.S. position as principal consultant – on the left hand side of the chart and [REDACTED] – in [REDACTED] at organizational level 4 – on the right hand side of the chart. It is noted that Mr. [REDACTED] position title was not provided, nor does the left hand side, which seemingly pertains to the petitioner's subsidiary in Canada, list the beneficiary anywhere within the hierarchy.

In a decision dated September 18, 2014, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. In response to the petitioner's submission of evidence showing approval of a previously filed L-A extension petition, the director noted that U.S. Citizenship and Immigration Services is not bound by the determination made with regard to the petitioner's nonimmigrant petition. Next, the director catalogued a number of deficiencies, including the petitioner's failure to submit the requested chart of the foreign entity's organizational hierarchy. The director went on to note the distinction between the beneficiary's current U.S. position and his former position with the foreign entity, pointing out that the current position is at level four while the former position was at level three within the beneficiary's given department. Further, the director reviewed the company-generated job descriptions for a senior consultant and listed the various non-qualifying operational tasks the beneficiary was required to carry out during the course of his former employment.

The petitioner subsequently filed an appeal supported by an appellate brief in which the petitioner disputes the director's decision, contending that the director "ignores substantial and credible evidence" submitted in support of the petition with regard to the beneficiary's job duties. The petitioner includes a copy of the percentage breakdown that was provided in the original supporting document, asserting that despite the difference in job titles between the beneficiary's former and current positions, the beneficiary operates "at a

senior level of responsibility and exercises direction over the day-to-day operations” of the essential UAT function.

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

### III. Issues on Appeal

As indicated above, the sole issue to be addressed in this proceeding is whether the beneficiary's former employment with the petitioner's subsidiary in Canada was in a qualifying managerial capacity. The petitioner does not claim that the beneficiary was employed in an executive capacity.

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's job duties while occupying the position in question. *See* 8 C.F.R. § 204.5(j)(5). Published case law has determined that 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 foreign entity's organizational structure, the duties of other employees, an explanation of who performed the operational duties or duties of the underlying essential function where the beneficiary claims to have been a function manager, and any other factors that may contribute to a comprehensive understanding of a beneficiary's actual duties and role within the foreign entity.

Turning first to the beneficiary's job description, we note that the petitioner failed to comply with the director's request. While both the initial supporting statement and copies of documents submitted in response to the director's RFE include a detailed percentage breakdown of the job duties that comprise the beneficiary's proposed position with the petitioning U.S. entity, the petitioner did not provide a similar breakdown of the job duties that comprised the beneficiary's former position with the foreign entity. Instead, the petitioner provided two separate job descriptions – one containing a more general description of the senior consultant's responsibilities and another containing a more comprehensive list of the main responsibilities, work product contributions, and technical requirements of the senior consultant position. As noted in the director's discussion, the latter description included a number of the problem solving tasks that contributed to the work product provided ultimately to the end user, i.e., the company's client(s). The beneficiary's problem solving tasks included selecting the proper method for obtaining solutions to problems, troubleshooting and providing support on various issues, resolving routine issues and documenting the resolutions, determining customer needs and coming up with plans for meeting those needs within the employer's given resources, and assisting the customer with ways to effectively run his/her business. The petitioner provided no information as to the amount of time the beneficiary allocated to these key responsibilities. In addition, the section entitled “Key Responsibilities” also listed a number of non-qualifying client-driven tasks, including documenting the customer's business requirements, customizing the employer's software applications to meet the customer's needs, and conducting in-person and phone consulting sessions.

Further, while the job description indicates that the beneficiary worked independently and that leading and coordinating team activities were within the senior consultant's purview, there is no indication as to the percentage of time the beneficiary allocated to the latter two job duties. Moreover, the job description

indicates that working independently would include engaging in the sales process with little or no guidance from management. While the job description does not provide further information as to the specific nature of the beneficiary's involvement in the sales component, there is no evidence to establish that any sales-related job duties the beneficiary assumed were within a qualifying managerial capacity. 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)). While no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary performed during his employment abroad were only incidental to the position in question. 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, the petitioner failed to provide the requested percentage breakdown expressly stating what portion of the beneficiary's time was allocated to the various non-qualifying tasks noted above. Without this critical information, we are unable to determine that the beneficiary allocated his time primarily to tasks within a qualifying managerial capacity. Furthermore, the petitioner's assertions that the beneficiary's former and proposed positions are similar in their senior levels of responsibility and their discretion over daily operations as they relate to the UAT function are not consistent with the evidence on record. Specifically, the record indicates that the beneficiary's current position is placed a full level higher within the hierarchy than the position of a senior consultant. Despite the petitioner's failure to provide an organizational chart specifically pertaining to the beneficiary's position abroad, the record contains sufficient evidence to identify the beneficiary's former position as "level three" and his current position as "level four" within each respective entity's chain of command. While the petitioner claims on appeal that an organizational chart was provided, indicating that the director's finding to the contrary was incorrect, our review of the organizational chart that the petitioner submitted in response to the RFE is in line with the director's finding. The chart referenced by the petitioner on appeal did not show the beneficiary's position within the foreign entity's organizational hierarchy during his employment abroad. Rather, the chart focused on the beneficiary's current position and on the foreign entity's current hierarchy. Contrary to the petitioner's assertions, the chart provided no information as to the position the beneficiary held previously while employed for the petitioner's Canadian subsidiary. Thus, the petitioner's assertion on appeal does not establish that the director's analysis of the evidence was incorrect.

Moreover, any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In this matter, the record indicates that the petitioner failed to provide two key pieces of evidence, both of which were expressly requested in the RFE. As discussed herein, not only did the petitioner fail to provide the foreign entity's organizational chart depicting the beneficiary's placement during his employment abroad, but the petitioner also failed to provide the requested percentage breakdown listing the beneficiary's job duties. As discussed above, the job descriptions on record does not establish that the beneficiary allocated his time primarily to tasks within a qualifying managerial capacity.

Further, the record lacks evidence to support the petitioner's claim that the beneficiary was employed abroad in the role of a function manager. The term "function manager" applies generally 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). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. As previously noted, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be 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. at 604. In this matter, the job description indicates that the beneficiary actually carried out the underlying tasks of the function he is claimed to have managed. Therefore, the petitioner has not provided evidence that the beneficiary managed an essential function.

Accordingly, in light of the evidence discussed above, the petitioner has failed to establish that the beneficiary's employment with the foreign entity consisted primarily of tasks within 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, that burden has not been met.

**ORDER:** The appeal is dismissed.