



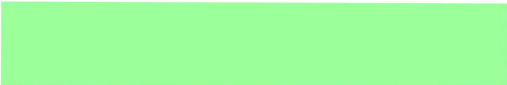
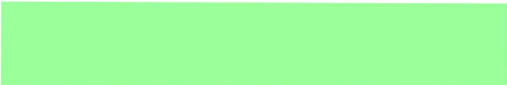
U.S. Citizenship
and Immigration
Services

(b)(6)



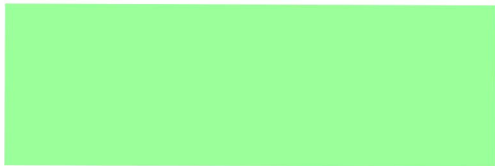
DATE: **JAN 05 2015** OFFICE: TEXAS SERVICE CENTER

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

The petitioner filed this Form I-140, Immigrant Petition for Alien Worker, 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 engaged in landscaping and construction, and claims to be a subsidiary of [REDACTED] the beneficiary's former employer, located in Venezuela. The petitioner seeks to employ the beneficiary in the position of General Manager.

On March 13, 2013, the director denied the immigrant petition, finding the petitioner had failed to establish that the beneficiary would be performing qualifying managerial or executive duties in the United States.

The petitioner subsequently filed a motion to reopen which was dismissed. Now on appeal, the petitioner submits a brief disputing the director's adverse findings.

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.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. THE ISSUE ON APPEAL

A. U.S. Employment in a Managerial or Executive Capacity

The issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

1. Facts

The petitioner has offered the beneficiary a permanent position as general manager. The petitioner previously filed a Form I-129 and obtained an L-1A visa for the beneficiary.¹ In a letter of support, the petitioner explained that the position of general manager is "crucial to the success of the company" and that the beneficiary "manages, plans, directs, and supervises the operations of the business enterprise with the assistance of subordinate managers and professionals in the United States." The petitioner also stated that the beneficiary "serves at the highest level of the organization," and "only received general supervision by the company's Board of Directors." In support of the petition, the petitioner provided the following job description:

- Planning and directing the operation and expansion of the company; 15%
- Managing finances; 10%

¹ Receipt [REDACTED] valid from January 25, 2010 to January 3, 2013.

- Developing and implementing policies and procedures for company operations; 10%
- Overseeing the contract negotiation with current and potential suppliers; 5%
- Formulating pricing policies, approval of Project Budget and preparation of project estimates to obtain new jobs; 10%
- Approving the budget for the company and determining allocation of funds; 10%
- Planning and implementing new operating procedures to improve efficiency and reduce costs; 10%
- Directing streamlined training programs to supervise and direct sub-managers and overseeing manager training programs (including hiring and firing); 10%
- Directing Contract negotiation and developing and implementing marketing strategies; 10%
- Conducting meetings with property owners, field staff and subcontractors. 10%

The petitioner also submitted an organizational chart that indicated the beneficiary as General Manager, who in turn supervises the: Project Manager, Financial Manager, Design/Installation Supervisor, Supervisor, Office Manager and three workers. The petitioner provided a brief job description for each employee; indicating that the Financial Manager “supervises general accounting and finance matters;” the Project Manager “participates in the conceptual development of projects and oversees its organization, scheduling and implementation;” and the Office Manager “manages administrative and clerical tasks.”

On November 13, 2014, the director sent a request for evidence ("RFE"). In part, the director requested a detailed job description of the beneficiary's specific tasks (rather than categories of duties), including the percentage of time spent on each task. In addition, the director requested all Forms W-2 and/or 1099 MISC for all employees employed by the petitioner in 2011.

In response to the director's RFE, the petitioner provided the beneficiary's proposed duties and the percentage breakdown that was previously submitted but added several examples of tasks to be performed by the beneficiary. The petitioner also provided the tax forms for all employees in 2011. According to the Form 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2011, the petitioner employs six to seven individuals.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's proposed job duties. See 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, 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 this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary would be relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary would allocate his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

The job description includes several non-qualifying duties such as the beneficiary will be responsible for "dealing with suppliers regarding negotiations over the credit lines when the appropriate Manager needs support;" "attending occasional meetings with suppliers to maintain in good terms the business relationships;" "directing landscaping service simplification and standardization to eliminate unprofitable services;" "establishing schedules for each project;" and, "directing and coordinating contract negotiation and activities involving sales of landscaping services and projects." The petitioner stated that the beneficiary will work with its subordinates to manage these tasks but upon review of the tax statements for 2011, it is not clear if every employee listed on the organizational chart was working full time. For example, in 2011, the Design/Installation Supervisor was paid \$5,403.68; and the Supervisor was paid \$8,091.25. These salaries do not represent full-time employment. Thus, it is not clear who is performing the project management operations such as meeting with clients, planning the technical specifications of a project, going to the project site regularly, managing the workers of the project site and handling any problems or complaints. It appears that the beneficiary may be in charge of project management rather than directing such activities through subordinate employees. 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 Intn'l.*, 19 I&N Dec. at 604.

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by

a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employees. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, to perform the duties of the Financial Manager, who "supervises general accounting and finance matters" or the Project Manager, who "participates in the conceptual development of projects and oversees its organizational, scheduling and implementation," or the Office Manager, who "manages administrative and clerical tasks."

The petitioner has failed to provide a sufficiently detailed explanation, along with credible and probative supporting documentation, establishing the U.S. entity's overall organizational structure, staffing levels, and the scope of its business activities at the time of filing. The record is unclear as to the beneficiary's actual role will be, and as to the petitioner's actual staffing levels. Overall, the record is insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reason. 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.