



U.S. Citizenship  
and Immigration  
Services

NOV 19 2010

Refer to File Number:  
LIN10 045 50520

[REDACTED]

Dear Sir or Madam:

Case Type: I-140, PETITION FOR ALIEN WORKER  
Beneficiary: [REDACTED]

### DECISION

This petition, filed on December 7, 2009, seeks to classify the beneficiary as an immigrant under Section 203(b)(1)(C) of the Immigration and Nationality Act, as amended. An alien qualifies for that classification 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 the alien 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.

Title 8, Code of Federal Regulations, Part 204.5(j)(2) defines "executive capacity" as:

an assignment within an organization in which the employee primarily:

- (A) Directs the management of the organization or a major component or function of the organization;
- (B) Establishes the goals and policies of the organization, component, or function;
- (C) Exercises wide latitude in discretionary decisionmaking; and
- (D) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Title 8, Code of Federal Regulations, Part 204.5(j)(2) defines "managerial capacity" as:

an assignment within an organization in which the employee primarily:

(A) Manages the organization, or a department, subdivision, function, or component of the organization;

(B) 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;

(C) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised, 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

(D) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

Title 8, Code of Federal Regulations, Part 204.5(j)(5) states:

No labor certification is required for this classification; however, 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 letter must clearly describe the duties to be performed by the alien.

The petitioner is a corporation established in the State of Michigan on January 29, 2004 as a specialty restaurant with 29 employees. The petitioner seeks to employ the beneficiary as a vice president at \$40,000 per year.

The evidence initially submitted with the petition did not clearly demonstrate that the beneficiary qualified as an executive or manager at the time the petition was filed. On April 9, 2010, U.S. Citizenship and Immigration Service (USCIS) issued a Request for Evidence ("RFE") letter to give the petitioner the opportunity to submit additional documentation in support of the petition. The petitioner was given notice that all of the evidence must be submitted at the same time, and submission of only part of the evidence requested would be considered a request for a decision based upon the record. The petitioner was also advised that, should the evidence submitted not establish that the case was approvable at the time of filing then the petitioner would be denied. The contents of the request for evidence will not be repeated here as it has been incorporated in the record.

The issue here is whether the petitioner has established that the beneficiary will be employed in a position that is primarily managerial or executive in nature.

In the statement provided with the petition, the petitioner states that the beneficiary will serve as vice president with the following responsibilities:

- Reviewing of all contracts with existing and prospective clients, with a view to securing long-term contracts;
- Reviewing and providing recommendations attendant with proper and timely hiring of all personnel during peak load spring/summer and holiday periods;
- Reviewing direction of human resource management and authorization of all wages;
- Reviewing direction and organization of all marketing and advertising methods targeted to increase revenues;
- Setting up high quality of customer service standards for the US petitioner;

- Reviewing authorization of quarterly and annual budgets, as well as authorization of all prices for catering services;
- Assuring that all food handling/licensing requirements are met at all times;
- Overseeing and authorizing all expenditures for the US petitioner;
- Analyzing customer and client surveys and current marketing trends; as well as financial data and establishing more efficient means to attract client base; and
- Overseeing all accounting and banking operations

In response to CIS request for additional evidence, the petitioner provided an enhanced outline of the beneficiary's duties as follows:

- Reviewing and discussing reports submitted by his subordinates, the General Manager and Mangers. It includes reports of weekly sales, Monthly Store Evaluations, Customer complaints/Compliments, Food Costs and Payrolls. Using these reports the Quarterly growth report is prepared that to be submitted to [REDACTED] the controller, and the franchisor (30%);
- Arranging weekly meetings with his General Manger, [REDACTED] and monthly meetings with Mangers, and attending yearly company meeting (Christmas party) discussing the Achievements of the Company for that year. (15%);
- Hire, promote, terminate and direct training of new mangers/subordinate staff-this duty involved following up with [REDACTED] on her interviews of potential hires, consultations with [REDACTED] regarding existing employees; performance and giving direction to [REDACTED] regarding promotion, termination, and wage increases (15%);
- Make short-term and long-term decisions regarding all aspects of business operations-this duty will involve day-to-day consultations with [REDACTED] as well as analysis of sales records and inventory levels by product categories (15%);
- Attending meetings with local real estate agents for survey of potential locations for new sotre opening. Traveling in neighboring cities and states for Site Selection and preparing Site Reviews for expansion. Attending meetings with lawyers for any legal matters pertaining to deal closing, affidavits, and any legal proceedings (10%);
- Traveling to Trade-shows and conventions for innovative ideas and learning market trends. Acting as a representative of company, if participating in any of the Trade-show or conventions (5%);
- Attending local Chamber of Commerce meetings and local City's Small Business meetings to get updates of local economy and events in city that may help in growing business. Representing company and attending meetings with Local City Departments viz. food and health department, fire department, police department, building department, for various permits to operate business (5%);
- Attending meetings with superior [REDACTED] to discuss the growth report and the steps take to achieve the long term goal (5%).

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level of responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary primarily performs these specified responsibilities and does not

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spend a majority of his or her time on day-to-day functions. An employee who primarily performs the tasks necessary to produce a product or provide services is not considered to be employed in a managerial or executive capacity. Therefore, the fact that the petitioner claims that the beneficiary manages a business does not necessarily establish eligibility for classification as a multinational executives and managers in a managerial or executive capacity within the meaning of sections 101(a)(44)(A) and (B) of the Act. The record must establish that the majority of the beneficiary's duties will be primarily directing the management of the organization.

The fact that the petitioner claims that the beneficiary manages a business does not necessarily establish eligibility for classification as a multinational executive or manager in a managerial or executive capacity within the meaning of sections 101(a)(44)(A) and (b) of the Act. The record must establish that the majority of the beneficiary's duties will be primarily directing the management of the organization. In this instance, it appears that the beneficiary has been and/or will be performing many aspects of the day-to-day operations of the business.

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties to be performed by the beneficiary. Additionally, assuming that the petitioner's job descriptions were adequately detailed, the beneficiary's responsibilities, nevertheless largely comprise of other duties or responsibilities for which the beneficiary primarily performs the task, which, by definition, qualifies as performing a task necessary to provide a product or provide services is not considered to be employed in a managerial or executive capacity.

Last, the beneficiary cannot be "function" manager. Although a manager or executive may manage or direct the management of a function of an organization, it must be clearly demonstrated that the manager or executive does not directly perform the function. The record clearly shows that the beneficiary is highly involved in the performance of routine quality assurance operational activities of the entity rather than in the management of the business.

**RIGHT TO APPEAL:** If you wish to appeal this decision, you may do so. Your Notice of Appeal or Motion, Form I-290B, must be filed with the Nebraska Service Center, P. O. Box 82521, Lincoln, NE 68501-2521. Your Form I-290B must be filed within 30 days from the date of this notice (33 days if this notice was received by mail) with the appropriate filing fee required by Title 8, Code of Federal Regulations, Part 103.7 and a brief or other written statement in support of your appeal. Do not send your appeal directly to the Administrative Appeals Office. Current fee information is available online at [www.uscis.gov](http://www.uscis.gov) or by calling the National Customer Service Center (NCSC) at 800-375-5283.

Sincerely,



Marilyn P. Wiles  
Director

NSC/EX0306

Enclosure: Form I-290B